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Part 1

# OIL POLLUTION PREVENTION, RESPONSE, LIABILITY, AND COMPENSATION ACT OF 1989

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SEPTEMBER 18, 1989.—Ordered to be printed

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Mr. ANDERSON, from the Committee on Public Works and Transportation, submitted the following

# REPORT

together with

## ADDITIONAL VIEWS

[To accompany H.R. 1465 which on March 16, 1989, was referred jointly to the Committee on Public Works and Transportation and the Committee on Merchant Marine and Fisheries]

[Including cost estimate of the Congressional Budget Office]

The Committee on Public Works and Transportation, to whom was referred the bill (H.R. 1465) to provide liability for damages resulting from oil pollution, to establish a fund for the payment of compensation for such damages, to improve oil pollution prevention and response, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

**SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the "Oil Pollution Prevention, Response, Liability, and Compensation Act of 1989".

(b) TABLE OF CONTENTS.—The contents of this Act are as follows:

Sec. 1. Short title and table of contents.

TITLE I—OIL POLLUTION LIABILITY AND COMPENSATION

Sec. 101. Definitions.
Sec. 102. Liability.
Sec. 103. Uses of the Fund.
Sec. 104. Claims procedure.
Sec. 105. Designation, notification, and advertisement.
Sec. 106. Subrogation.

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Sec. 107. Financial responsibility.
Sec. 108. Litigation, jurisdiction, and venue.
Sec. 109. Relationship to other law.
Sec. 110. Regulations.
Sec. 111. Effective date.

TITLE II—PREVENTION AND RESPONSE

Sec. 201. Authority to direct responses.
Sec. 202. Response plans.
Sec. 203. Review and revision of response capability.
Sec. 204. Computer listing of emergency response resources and availability of agency data.
Sec. 205. Vessel traffic systems.
Sec. 206. Navigational aids.
Sec. 207. Periodic gauging of plating thickness of commercial vessels.
Sec. 208. Overfill and tank level or pressure monitoring devices.
Sec. 209. Tanker personnel.
Sec. 210. Use of liners.
Sec. 211. Modifications to dredges.
Sec. 212. Tanker free zones.
Sec. 213. Superiority of Federal pilots' licenses.
Sec. 214. Research and development program.
Sec. 215. Consideration of alcohol abuse.
Sec. 216. Access to National Driver Register.

TITLE III—IMPLEMENTATION OF INTERNATIONAL CONVENTIONS

Sec. 301. Definitions.
Sec. 302. Applicability of conventions.
Sec. 303. Recognition of International Fund.
Sec. 304. Action in United States courts.
Sec. 305. Contribution to International Fund.
Sec. 306. Recognition of foreign judgments.
Sec. 307. Financial responsibility.
Sec. 308. Regulations.

TITLE IV—MISCELLANEOUS PROVISIONS

Sec. 401. Trans-Alaska pipeline fund.
Sec. 402. Intervention on the High Seas Act.
Sec. 403. Federal Water Pollution Control Act.
Sec. 404. Deepwater Port Act.
Sec. 405. Outer Continental Shelf Lands Act Amendments of 1978.
Sec. 406. Qualified authorizing legislation.
Sec. 407. Effective date.

# TITLE I—OIL POLLUTION LIABILITY AND COMPENSATION

## SEC. 101. DEFINITIONS.

For the purposes of this Act—

(1) ACT OF GOD.—The term "act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(2) CLAIM.—The term "claim" means a request, made in writing for a sum certain, for compensation for damages or removal costs resulting from an incident.

(3) CLAIMANT.—The term "claimant" means any person who presents a claim for compensation under this Act.

(4) DAMAGES.—The term "damages" means damages for injury to, destruction of, or loss of natural resources and damages for economic loss specified in section 102(a)(2) of this Act, and includes the cost of assessment of damages.

(5) DISCHARGE.—The term "discharge" means any emission (other than natural seepage), intentional or unintentional, and includes spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(6) EXCLUSIVE ECONOMIC ZONE.—The term "exclusive economic zone" means the zone established by Presidential Proclamation Numbered 5030, dated March 10, 1983.

(7) FACILITY.—The term "facility" means any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. Such term includes any motor vehicle, rolling stock, or pipeline used for one or more such purposes.

(8) FOREIGN OFFSHORE UNIT.—The term "foreign offshore unit" means a facility which is located, in whole or in part, in the territorial sea or on or over the continental shelf of a foreign country.

(9) FUND.—The term "Fund" means the Oil Spill Liability Trust Fund established by section 9509 of the Internal Revenue Code of 1986.

(10) GROSS TON.—The term "gross ton" means tonnage measured in accordance with the provisions of the International Convention on Tonnage Measurement of Ships, 1969.

(11) GUARANTOR.—The term "guarantor" means any person, other than the responsible party, who provides evidence of financial responsibility for a responsible party under this Act.

(12) INCIDENT.—The term "incident" means any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial threat of discharge of oil.

(13) INDIAN TRIBE.—The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(14) LESSEE.—The term "lessee" means a person holding a leasehold interest in an oil or gas lease on lands beneath navigable waters (as such term is defined in section 2(a) of the Submerged Lands Act (43 U.S.C. 1301(a)) or on submerged lands of the Outer Continental Shelf, granted or maintained under applicable State law or the Outer Continental Shelf Lands Act.

(15) MOBILE OFFSHORE DRILLING UNIT.—The term "mobile offshore drilling unit" means a vessel (other than a self-elevating lift vessel) capable of use as an offshore facility.

(16) NATIONAL CONTINGENCY PLAN.—The term "national contingency plan" means the national contingency plan published under section 311(c) of the Federal Water Pollution Control Act and revised pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act.

(17) NATURAL RESOURCES.—The term "natural resources" includes land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the exclusive economic zone), any State or local government or Indian tribe, or any foreign government.

(18) NAVIGABLE WATERS.—The term "navigable waters" means the waters of the United States, including the territorial sea.

(19) OFFSHORE FACILITY.—The term "offshore facility" means—

(A) a facility which is located, in whole or in part, on lands beneath navigable waters (as such term is defined in section 2(a) of the Submerged Lands Act (43 U.S.C. 1301(a))) or on the Outer Continental Shelf (as defined in section 2 of the Outer Continental Shelf Lands Act); and

(B) a deepwater port licensed under the Deepwater Port Act of 1974.

(20) OIL.—The term "oil" means petroleum, including crude oil or any fraction or residue therefrom.

(21) ONSHORE FACILITY.—The term "onshore facility" means any facility (excluding any offshore facility) any portion of which is located in, on, or under any land within the United States.

(22) OWNER.—The term "owner" means any person holding title to, or in the absence of title any other indicia of ownership of (whether by lease, permit, contract, license, or other form of agreement), a vessel or facility; except that such term does not include a person who, without participating in the management or operation of a vessel or facility, holds indicia of ownership primarily to protect a security interest therein.

(23) PERSON.—The term "person" means an individual, corporation, partnership, association, Federal agency, State, municipality, commission, or political subdivision of a State, or any interstate body.

(24) PERMITTEE.—The term "permittee" means a person holding an authorization, license, or permit for geological exploration issued under section 11 of the Outer Continental Shelf Lands Act or applicable State law.

(25) PUBLIC VESSEL.—The term "public vessel" means a vessel owned or bareboat chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

(26) REMOVE; REMOVAL.—The term "remove" or "removal" refers to removal of the oil from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including damage to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

(27) **Removal costs.**—The term "removal costs" means the costs of removal taken after a discharge of oil has occurred, including all costs of completing removal and the costs to prevent, minimize, or mitigate oil pollution where there was a substantial threat of a discharge of oil including costs incurred under subsection (c), (d), (e), or (l) of section 311 of the Federal Water Pollution Control Act, the Intervention on the High Seas Act, or section 18 of the Deepwater Port Act of 1974.

(28) **Responsible party.**—The term "responsible party" means the following:

(A) **Vessels.**—In the case of a vessel, any person owning, operating, or chartering by demise the vessel.

(B) **Facilities.**—In the case of a facility (including a pipeline but not including any other offshore facility), any person owning or operating the facility; except that such term does not include a Federal agency, State, municipality, commission, or political subdivision of a State, or any interstate body, that, as the owner of an onshore facility, transfers possession and right to use the property to another person by lease, assignment, or permit.

(C) **Offshore facilities.**—In the case of an offshore facility (other than a pipeline or a deepwater port licensed under the Deepwater Port Act of 1974), the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable State law or the Outer Continental Shelf Lands Act for the area in which the facility is located (if the holder is a different person than the lessee or permittee).

(D) **Deepwater ports.**—In the case of a deepwater port licensed under the Deepwater Port Act of 1974, the licensee.

(E) **Abandonment.**—In the case of an abandoned vessel, onshore facility, or offshore facility, the persons who were, or would have been, responsible parties immediately prior to the abandonment of the vessel or facility.

(29) **Secretary.**—The term "Secretary" means the Secretary of Transportation.

(30) **Tanker.**—The term "tanker" means a vessel constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo; except that the term does not include a non-self-propelled vessel of less than 3,000 gross tons carrying oil in bulk as cargo or in residue from cargo and operating on waters of the United States lying inside the baseline from which the territorial sea is measured or on waters outside such baseline which are part of the Gulf Intracoastal Waterway.

(31) **United states; state.**—The term "United States" and "State" mean the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction.

(32) **Vessel.**—The term "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel.

### SEC. 102. LIABILITY.

(a) **Elements of Liability.**—

(1) **Joint, several, and strict liability.**—Notwithstanding any other provision of law and subject to the provisions of this section, the responsible party for a vessel or a facility from which oil is discharged, or which poses a substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the waters of the exclusive economic zone is jointly, severally, and strictly liable for the removal costs specified in paragraph (2) which arise out of or directly result from such incident and for the damages specified in paragraph (2) which are proximately caused by such incident.

(2) **Covered removal costs and damages.**—

(A) **Removal costs.**—The removal costs referred to in paragraph (1)—

(i) are removal costs for removal actions taken by the United States, a State, or an Indian tribe which are not inconsistent with the national contingency plans; and

(ii) are removal costs for removal actions taken by any other person which are consistent with the national contingency plan.

Such costs shall be recoverable by any claimant.

(B) **Damages.**—The damages referred to in paragraph (1) are the following:

(i) NATURAL RESOURCES.—Damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss. Such damages shall be recoverable by the following: a United States trustee, a State trustee, and an Indian tribe trustee.

(ii) REAL OR PERSONAL PROPERTY.—Damages for injury to, or economic losses resulting from destruction of, real or personal property. Such damages shall be recoverable by a claimant who owns or leases such property.

(iii) SUBSISTENCE USE.—Damages for loss of subsistence use of natural resources. Such damages shall be recoverable by any claimant who so uses natural resources which have been injured, destroyed, or lost.

(iv) REVENUES.—Damages equal to the net loss of taxes, royalties, rents, fees, or net profits shares, for a period not to exceed 2 years, due to the injury, destruction, or loss of real property, personal property, or natural resources. Such damages shall be recoverable by the Government of the United States, a State, or a political subdivision thereof.

(v) PROFITS AND EARNING CAPACITY.—Damages equal to the loss of profits or impairment of earning capacity (based on prior profits and earnings) due to the injury, destruction, or loss of real property, personal property, or natural resources. Such damages shall be recoverable by any claimant who derives at least 25 percent of his or her earnings from activities which utilize such property or natural resources, or, if such activities are seasonal in nature, 25 percent of his or her earnings during the applicable season.

(3) EXCLUDED DISCHARGES.—Paragraph (1) shall not apply to any discharge authorized by a permit issued under Federal, State, or local law.

(4) LIABILITY OF THIRD PARTIES.—

(A) IN GENERAL.—In any case in which the responsible party for a vessel or facility establishes that a discharge and the resulting removal costs and damages were caused solely by an act or omission of 1 or more third parties described in subsection (b)(1)(B) (or by such an act or omission in combination with an act of God or an act of war), the third party or parties shall be treated as the responsible party or parties for purposes of determining liability under this Act.

(B) LIMITATION APPLIED.—

(i) OWNER OR OPERATOR OF VESSEL OR FACILITY.—If the third party or parties are the owner or operator of a vessel or facility which caused the incident, the liability of the third party or parties shall be subject to the limits provided in subsection (c) as applied with respect to such vessel or facility.

(ii) OTHER CASES.—In any case other than the one described in clause (i), the liability of the third party or parties shall not exceed the limitation which would have been applicable to the responsible party of the vessel or facility from which the discharge actually occurred if such responsible party were liable.

(5) DIVISION OF RESPONSIBILITY FOR DISCHARGES OF MOBILE OFFSHORE DRILLING UNITS.—

(A) TREATED FIRST AS A TANKER.—For purposes of determining the responsible party and applying this Act, a mobile offshore drilling unit which is being used as an offshore facility shall be treated as a tanker with respect to the discharge, or the substantial threat of a discharge, of oil on or above the surface of the water, except as provided in subparagraph (B).

(B) TREATED AS A FACILITY FOR EXCESS LIABILITY.—To the extent that removal costs and damages from an incident described in subparagraph (A) exceed the amount for which the responsible party is liable under subparagraph (A) (as such amount may be limited under subsection (c)(1)(A)), the mobile offshore drilling unit shall be treated as an offshore facility. For purposes of applying subsection (c)(1)(C), the amount specified in such subsection shall be reduced by the amount for which the responsible party is liable pursuant to subparagraph (A).

(b) DEFENSES TO LIABILITY.—

(1) COMPLETE DEFENSES.—Except when the responsible party has failed or refused to report the incident where required by law and the responsible party knows or has reason to know of the incident, there is no liability under subsection (a) for the incident if the responsible party establishes that the incident—

(A) resulted from an act of God, an act of war, hostilities, civil war, or insurrection; or

(B) was solely caused by an act or omission of 1 or more persons other than—

(i) a responsible party;

(ii) an employee or agent of a responsible party; or

(iii) one whose act or omission occurs in connection with a contractual relationship with a responsible party.

(2) Defenses as to particular claimants.—There is no liability under subsection (a)—

(A) as to a claimant, if the incident is caused, in whole or in part, by the gross negligence or willful misconduct of the claimant; or

(B) as to a claimant, to the extent that the incident is caused by the negligence of the claimant.

(c) Limits on Liability.—

(1) General rule.—The total of the liability of a responsible party under subsection (a) and any removal costs incurred by, or on behalf of, the responsible party with respect to each incident shall not exceed—

(A) $500 per gross ton or $5,000,000, whichever is greater (but not to exceed $150,000,000), for any tanker;

(B) $300 per gross ton or $500,000, whichever is greater, for any other vessel; or

(C) $75,000,000 for any facility.

(2) Exceptions.—

(A) Proximate cause.—Paragraph (1) shall not apply if the incident was proximately caused by—

(i) willful misconduct or gross negligence within the privity or knowledge of the responsible party; or

(ii) a violation, within the privity or knowledge of the responsible party, of applicable Federal safety, construction, or operating regulations.

(B) Failure or refusal of responsible party.—Paragraph (1) shall not apply if the responsible party fails or refuses—

(i) to report the incident where required by law and the responsible party knows or has reason to know of the incident;

(ii) to provide all reasonable cooperation and assistance requested by a responsible official in connection with removal activities; or

(iii) without sufficient cause, to comply with an order issued under section 311(e) of the Federal Water Pollution Control Act.

(3) Adjusting limits of liability.—

(A) Facilities.—

(i) General rule.—The Secretary is authorized to establish, by regulation, with respect to any class or category of facility (excluding an offshore facility but including a deepwater port, as defined in section 3 of the Deepwater Port Act of 1974) a maximum limit of liability under this section of less than $75,000,000, but not less than $8,000,000, taking into account the size, storage capacity, oil throughput, proximity to sensitive areas, type of oil handled, history of discharges, and other factors relevant to risks posed by the class or category of facility.

(ii) Periodic reports.—The Secretary shall, within 6 months after the date of the enactment of this Act and from time to time thereafter, report to Congress on the desirability of adjusting the limits of liability specified in paragraph (1) of this subsection.

(B) Vessels.—

(i) Study.—The Secretary shall conduct a study of the relative operational and environmental risks posed by the transportation of oil by vessel to deepwater ports (as defined in section 3 of the Deepwater Port Act of 1974) versus the transportation of oil by vessel to other ports. Such study shall include a review and analysis of offshore lightering practices used in connection with such transportation, an analysis of the volume of oil transported by vessel using such practices, and an analysis of the frequency and volume of oil discharges which occur in connection with the use of such practices.

(ii) Report.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the results of the study conducted under this subparagraph.

(iii) Rulemaking proceeding.—If the Secretary determines, based on the results of the study conducted under this subparagraph, that the use of deepwater ports in connection with the transportation of oil by vessel results in a lower operational or environmental risk than the use of other ports in connection with such transportation, the Secretary shall initiate, not later than the 180th day following the date of submission of the report to Congress under this subparagraph, a rulemaking proceeding to lower the limits of liability under this section with respect to vessels transporting oil to deepwater ports and with respect to such ports and may lower such limits of liability as the Secretary determines appropriate but with respect to such ports only in accordance with subparagraph (A).

(d) Liability for Interest.—

(1) General rule.—The responsible party or his or her guarantor shall be liable to a claimant for interest on the amount paid in satisfaction of a claim under this section for the period described in paragraph (2).

(2) Period.—

(A) In general.—Except as provided in subparagraph (B), the period for which interest shall be paid under paragraph (1) is the period beginning on the 30th day following the date on which the claim is presented to the responsible party or guarantor and ending on the date on which the claim is paid.

(B) Exclusion of period due to offer by guarantor.—If the guarantor offers to the claimant an amount equal to or greater than that finally paid in satisfaction of the claim, the period described in subparagraph (A) shall not include the period beginning on the date such offer is made and ending on the date such offer is accepted. If such offer is made within 60 days after the date upon which the claim is presented pursuant to section 104(a), the period described in subparagraph (A) shall not include any period before such offer is accepted.

(C) Exclusion of periods in interest of justice.—If, in any period, a claimant is not paid due to reasons beyond the control of the responsible party or because it would not serve the interest of justice, no interest shall accrue under this subsection during such period.

(D) Calculation of interest.—The interest paid under this subsection shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of 180 days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve bulletin.

(E) Interest not subject to liability limits.—Interest under this paragraph shall be in addition to damages for which claims may be asserted under section 102 and shall be paid without regard to any limitation of liability under subsection (c) of this section. The payment of interest under this subsection by a guarantor shall be subject to section 107(e).

(e) Natural Resources.—

(1) Liability.—In the case of an injury to, destruction of, or loss of natural resources under this section, liability shall be—

(A) to the United States Government for natural resources belonging to, managed by, controlled by, or appertaining to the United States,

(B) to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State,

(C) to any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such Indian tribe, and

(D) in any case in which subsection (f) of this section (relating to recovery by foreign claimants) applies, to the government of a foreign country for natural resources belonging to, managed by, controlled by, or appertaining to such country.

(2) Designation of trustees.—

(A) In general.—The President, or the authorized representative of any State, Indian tribe, or foreign government, shall act on behalf of the public or Indian tribe as trustee of the natural resources to recover damages to the natural resources.

(B) Federal trustees.—The President shall designate the Federal officials who shall act on behalf of the public as trustees for natural resources under this Act.

(C) State trustees.—The Governor of each State shall designate State and local officials who may act on behalf of the public as trustee for natural resources under this Act and shall notify the President of such designation.

(D) Indian tribe trustees.—The governing body of any Indian tribe shall designate tribal officials who may act on behalf of the tribe or its members as trustee for natural resources under this Act and shall notify the President of such designation.

(3) Functions of trustees.—

(A) Federal trustees.—The officials designated under paragraph (2)(B)—

(i) shall assess damages for injury to, destruction of, or loss of natural resources for purposes of this Act for the natural resources under their trusteeship;

(ii) may, upon request of and reimbursement from a State or Indian tribe and at the Federal officials' discretion, assess damages for the natural resources under the State's or tribe's trusteeship; and

(iii) shall develop and implement a plan for the restoration, rehabilitation,

replacement, or acquisition of the equivalent, of the natural resources under their trusteeship.

(B) State trustees.—The officials designated under paragraph (2)(C)—

(i) shall assess damages to natural resources for the purposes of this Act for the natural resources under their trusteeship; and

(ii) shall develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship.

(C) Indian tribe trustees.—The officials designated under paragraph (2)(D)—

(i) shall assess damages to natural resources for the purposes of this Act for the natural resources under their trusteeship; and

(ii) shall develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship.

(D) Notice and opportunity to be heard.—Plans shall be developed and implemented under subparagraphs (A)(iii), (B)(ii), and (C)(ii) only after adequate public notice, opportunity for a hearing, and consideration of all public comment.

(4) Measure of damages.—

(A) In general.—The measure of damages in any action under this section for injury to, destruction of, or loss of natural resources shall be—

(i) the costs of restoring, rehabilitating, replacing, or acquiring the equivalent of, the damaged natural resources; and

(ii) the value of the lost public uses of such resources in the period beginning on the date the damage occurs and ending on (I) the date such resources are restored, rehabilitated, or replaced or the equivalent is acquired, or (II) the date on which it is determined that such resources cannot be restored, rehabilitated, or replaced or no equivalent can be acquired.

(B) Determine costs with respect to plans.—Costs shall be determined under subparagraph (A) with respect to plans adopted under paragraph (3)(A), (B), and (C).

(C) No double recovery.—There shall be no double recovery under this Act for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, replacement, or acquisition for the same incident and natural resource.

(5) Damage assessment regulations and study.—

(A) Regulations.—Not later than 2 years after the date of the enactment of this Act, the President shall issue regulations, consistent with paragraph (4)(A), for the assessment of damages to natural resources arising out of an incident.

(B) Rebuttable presumption.—Any determination or assessment of damages to natural resources for the purposes of this Act made pursuant to paragraph (4)(A)(i) by a Federal, State, or Indian tribe trustee in accordance with the regulations issued under subparagraph (A) shall have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under this Act.

(C) Study.—The President shall conduct a study of techniques and methods of valuing natural resource damages. Not later than 1 year after the date of the enactment of this Act, the President shall transmit to Congress a report on the results of such study.

(6) Use of recovered sums.—Sums recovered under this Act by a Federal, State, or Indian tribe trustee for damages to natural resources shall be retained by the trustee for use only to reimburse or pay costs incurred by the trustee under paragraph (3) with respect to the damaged natural resources. Any amounts in excess of those required for these reimbursements and costs shall be deposited in the Fund.

(7) Civil penalty.—

(A) In general.—Any responsible party liable under this section for damages resulting from a discharge of oil shall be subject to a civil penalty not to exceed the greater of $1,000,000 or 1/2 of the responsible party's liability under this section if the discharge results in damages to natural resources which cannot be restored, rehabilitated, or replaced and for which no equivalent can be acquired.

(B) Assessment, settlement, and collection.—The President or authorized representative of a State or Indian tribe, acting under this section as trustee, may request the Attorney General to bring an action in court to recover from the responsible party a civil penalty under this paragraph. In determining the amount of a civil penalty under this paragraph, the court shall consider the nature and extent of the damages to natural resources, the value of the natural resources, the degree of culpability of the person held liable for the discharge, and the nature and extent of efforts taken by the person to prevent and mitigate damages to natural resources and to restore damaged natural resources.

(C) Separate liability.—Except as provided in section 302, any liability for a civil penalty under this paragraph shall be separate from and in addition to any liability for a discharge of oil under this section.

(D) Payment to trustee for ecosystem enhancement.—Subject to appropriation Acts, sums received under this paragraph shall be paid to the trustee to be used for the general enhancement of the ecosystem of which the destroyed natural resources were a part for the purpose of restoring and maintaining the chemical, physical, and biological integrity of such ecosystem.

(f) Recovery by Foreign Claimants.—

(1) In general.—A foreign claimant may recover removal costs and damages under this Act only in accordance with this subsection.

(2) Covered discharges.—A foreign claimant may recover only if the discharge of oil was from—

(A) a facility,

(B) a vessel in the navigable waters of the United States, or

(C) a tanker carrying oil originally received at the terminal of the pipeline constructed under the Trans-Alaska Pipeline Authorization Act for transportation to a port in the United States and the incident occurred prior to delivery to such port,

and resulted in the presence of oil in or on the territorial sea, internal waters, or adjacent shoreline of a foreign country.

(3) Requirements.—A foreign claimant may recover only if—

(A) the claimant first seeks compensation under title III;

(B) the claimant has not been otherwise compensated for the removal costs or damages; and

(C) recovery is authorized by a treaty or executive agreement between the United States and the claimant's country, or the Secretary of State, in consultation with the Attorney General and other appropriate officials, has certified that the claimant's country provides a comparable remedy for United States claimants.

(4) Exception for Canadian claimants respecting Trans-Alaska pipeline oil.—Paragraph (3)(C) shall not apply with respect to recovery by a resident of Canada in the case of an incident described in paragraph (2)(C).

(5) Foreign claimant defined.—For purposes of this subsection, the term "foreign claimant" means any person residing in a foreign country, the government of a foreign country, or any agency or political subdivision of a foreign country.

(g) Recovery of Removal Costs and Damages by Responsible Party.—

(1) In general.—The responsible party for a vessel or facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, may

assert a claim for removal costs and damages under subsection (a) only if the responsible party establishes that—

(A) the responsible party is entitled to a defense to liability under subsection (b), or

(B) the responsible party is entitled to a limitation of liability under subsection (c).

(2) Extent of recovery.—A responsible party who is entitled to a limitation of liability may assert a claim under paragraph (1) of subsection (a) only to the extent that the sum of the removal costs and damages incurred by the responsible party plus the amounts paid by the responsible party or by the guarantor on behalf of the responsible party for claims asserted under subsection (a) exceeds the amount to which the total of the liability under subsection (a) and removal costs and damages incurred by, or on behalf of, the responsible party is limited under subsection (c).

(h) Contribution.—A person may bring an action for contribution against any other person who is liable or potentially liable under this section. Such an action shall be brought in accordance with section 108.

(i) Indemnification Agreements.—

(1) In general.—No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer any liability imposed under this section from any responsible party for any vessel or facility or from any person who may be liable for an incident under this section to any other person. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

(2) Relationship to other causes of action.—Nothing in this Act, including the provisions of paragraph (1) of this subsection, shall bar a cause of action that a responsible party subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(j) Consultation on Removal Actions.—The Secretary shall consult with the affected trustees designated under section 102(e)(2) on the appropriate removal action to be taken in connection with any discharge of oil. Removal with respect to any discharge shall be considered completed when so determined by the Secretary in consultation with the Governor or Governors of the affected State or States and in accordance with the national contingency plan.

### SEC. 103. USES OF THE FUND.

(a) In General.—

(1) Uses.—The Fund shall be available to the Secretary for—

(A) the payment of removal costs, and the costs of monitoring removal actions, incurred by Federal authorities;

(B) the costs incurred by Federal, State or Indian tribe trustees in carrying out their functions under section 102(e) for assessing damages to natural resources and for developing and implementing plans for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of damaged resources;

(C) the payment of obligations under subsection (e) of this section;

(D) the payment of removal costs and damages resulting from the discharge, or substantial threat of discharge, of oil from a foreign offshore unit;

(E) the payment of personnel, equipment, and training costs associated with the maintenance of the strike forces authorized under section 311(c) of the Federal Water Pollution Control Act;

(F) the payment of administrative and personnel costs and expenses reasonably necessary for and incidental to the implementation and administration of this Act; and

(G) the payment of contributions to the International Fund under title III of this Act.

(2) Settlement of claims.—The Fund shall also be available to the Secretary for the payment of otherwise uncompensated claims for removal costs and damages in accordance with section 104.

(b) Defenses to Liability for the Fund.—The Fund shall not be available to pay any claim for removal costs or damages—

(1) to a claimant if the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of the claimant; or

(2) to a claimant to the extent that the incident or economic loss is caused by the negligence of the claimant.

(c) **Maximum Amount Payable From Fund.**—The maximum amount which may be paid from the Fund with respect to any incident in combination with payment, if any, under the International Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage, 1984 shall not exceed $1,000,000,000. The President may increase the maximum amount with respect to the incident if the President determines that such increase is necessary and in the best interests of the United States. The authority granted the President under this subsection may not be delegated.

(d) **Federal and State Officials Who May Obligate From the Fund.**—The Secretary is authorized to issue regulations designating 1 or more Federal officials who may obligate money in the Fund in accordance with subsection (a) of this section or portions thereof. The Secretary shall designate the Commandant of the Coast Guard to be a Federal official who may obligate money in the Fund in accordance with subsection (a). The Secretary is also authorized to delegate authority to obligate money in the Fund or to settle claims to officials of a State with an adequate program operating under a cooperative agreement with the Federal Government.

(e) **Obligation of the Fund by State Officials.**—

(1) **Authority.**—In accordance with regulations issued under this subsection, the Governor of each State, or any appropriate State official designated by the Governor, is authorized to obligate the Fund for payment in an amount not to exceed $250,000 for removal costs not inconsistent with the national contingency plan required for the immediate response to an incident.

(2) **Notification.**—A Governor or designee exercising the authority granted by this subsection shall notify the Secretary within 24 hours after any obligation of a payment from the Fund.

(3) **Regulations.**—Not later than 6 months after the date of the enactment of this Act, the Secretary shall publish proposed regulations detailing the manner in which the authority to obligate the Fund and to enter into agreements under this subsection is to be exercised, and, not later than 3 months after the last day of the comment period on such proposed regulations, the Secretary shall issue the regulations.

(f) **Rights of Subrogation.**—Payment of any claim by the Fund under this Act shall be subject to the United States Government acquiring by subrogation all rights of the claimant to recover from the responsible party.

(g) **Audit.**—The Comptroller General shall provide an audit review team to audit all payments, obligations, reimbursements, or other uses of the Fund to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. The Comptroller General shall submit to Congress an interim report 1 year after the date of the establishment of the Fund. The Comptroller General shall thereafter provide such auditing of the Fund as is appropriate. Each Federal agency shall cooperate with the Comptroller General in carrying out this subsection.

(h) **Period of Limitations for Claims.**—

(1) **Removal costs.**—No claim may be presented under this section for recovery of removal costs with respect to an incident unless the claim is presented within 3 years after the date of completion of all removal action with respect to the incident.

(2) **Damages.**—No claim may be presented under this section for recovery of damages with respect to an incident unless the claim is presented within 3 years after the date on which the loss and its connection with the incident were reasonably discoverable with the exercise of due care or, in the case of damages to natural resources under section 102(a)(2), if later, the date on which final regulations are issued under section 102(e)(5).

(i) **Limitation on Payment for Same Costs.**—Where the Secretary has paid an amount out of the Fund for any costs or damages specified under subsection (a), no other claim may be paid out of the Fund for the same costs or damages.

(j) **Obligation in Accordance With Plan.**—

(1) **In general.**—Except as provided in paragraph (2), amounts may be obligated from the Fund for the restoration, rehabilitation, replacement, or acquisition of the equivalent of, natural resources only in accordance with a plan adopted under section 102(e)(3).

(2) **Exception.**—Paragraph (1) shall not apply in a situation requiring action to avoid irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action.

### SEC. 104. CLAIMS PROCEDURE.

(a) Presentation to Responsible Party or Guarantor.—Except as provided in subsection (b), all claims for removal costs or damages shall be presented first to the responsible party or the responsible party's guarantor for the source designated under section 105(a).

(b) Presentation to Fund.—Claims for removal costs or damages may be presented first to the Fund—

(1) in any case in which the Secretary has advertised or otherwise notified claimants in accordance with section 105(c);

(2) by a responsible party who may assert a claim under section 102(g);

(3) by the Governor of a State for removal costs incurred by the State; or

(4) by a United States claimant in a case in which a foreign offshore unit has discharged oil causing damage for which the Fund is liable under section 103(a)(1)(D).

(c) Election.—If a claim is presented in accordance with subsection (a) and—

(1) each person to whom the claim is presented denies all liability for the claim, or

(2) the claim is not settled by any person by payment within 180 days after the date on which (A) the claim was presented, or (B) advertising was begun pursuant to section 105(b), whichever is later,

the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Fund.

(d) Uncompensated Damages.—If a claim is presented in accordance with subsection (a) and full and adequate compensation is unavailable, either because the claim exceeds a limit of liability under section 102 or because the responsible party and his guarantor are financially incapable of meeting or unwilling to meet their obligations in full, a claim for the uncompensated damages may be presented to the Fund.

(e) Procedure for Claims Against the Fund.—The Secretary shall issue, and may from time to time amend, regulations for the presentation, filing, processing, settlement, and adjudication of claims under this Act against the Fund.

### SEC. 105. DESIGNATION, NOTIFICATION, AND ADVERTISEMENT.

(a) Designation of Source and Notification.—After receiving information of an incident, the Secretary shall, where possible and appropriate, designate the source or sources of the discharge. If a designated source is a vessel or a facility, the Secretary shall immediately notify the responsible party and the responsible party's guarantor, if known, of such designation.

(b) Advertisement by the Responsible Party or Guarantor.—If a responsible party or guarantor does not inform the Secretary, within 5 days after receiving notification of a designation under subsection (a), of his or her denial of the designation, such party or guarantor shall advertise the designation and the procedures by which claims may be presented to such party or guarantor, in accordance with regulations issued by the Secretary. Advertisement under the preceding sentence shall begin no later than 15 days after the date of the designation made under subsection (a). If advertisement is not otherwise made in accordance with this subsection, the Secretary shall promptly and at the expense of the responsible party or the guarantor, advertise the designation and the procedures by which claims may be presented to the responsible party or guarantor. Advertisement under this subsection shall continue for a period of no less than thirty days.

(c) Advertisement by the Secretary.—If—

(1) the responsible party and the guarantor both deny a designation within 5 days after receiving notification of a designation under subsection (a),

(2) the source of the oil discharge was a public vessel, or

(3) the Secretary is unable to designate the source or sources of the oil discharge under subsection (a),

the Secretary shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the Fund.

### SEC. 106. SUBROGATION.

(a) In General.—Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for costs or damages shall be subrogated to all rights, claims, and causes of action which the claimant has under this Act.

(b) Actions on Behalf of the Fund.—Upon request of the Secretary, the Attorney General shall commence an action on behalf of the Fund to recover any compensation paid by the Fund to any claimant pursuant to this Act, and all costs incurred by the Fund allocable to the claim, including prejudgment and other interest, administrative and adjudicative costs, and attorney's fees. Such an action may be commenced against any responsible party or (subject to section 107(e)) guarantor, or against any other person who is liable, pursuant to any law, to the compensated claimant or to the Fund, for the cost or damages for which the compensation was paid. Such an action shall be commenced against the responsible foreign government or other responsible party to recover any removal costs or damages paid from the Fund as the result of the discharge, or substantial threat of discharge, of oil from a foreign offshore unit.

### SEC. 107. FINANCIAL RESPONSIBILITY.

(a) VESSELS.—

(1) REQUIREMENT.—The responsible party for—

(A) any vessel over 300 gross tons (except a non-self-propelled vessel which does not carry oil as cargo or fuel) using any port or place in the United States or the navigable waters, or

(B) any vessel using the waters of the exclusive economic zone to transship or lighter oil destined for a port or place subject to the jurisdiction of the United States,

shall establish and maintain, in accordance with regulations issued by the Secretary, evidence of financial responsibility sufficient to meet the maximum amount of liability to which, in the case of a tanker, the responsible party could be subjected under section 102(c)(1)(A) of this Act, or to which, in the case of any other vessel, the responsible party could be subjected under section 102(c)(1)(B) of this Act, in any case in which the responsible party would be entitled to limit liability under such section. If the responsible party owns or operates more than one vessel, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) WITHHOLDING CLEARANCE.—The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91) of any vessel subject to this subsection that does not have the certification required under this subsection.

(3) DENYING ENTRY AND DETAINING VESSELS.—The Secretary may (A) deny entry to any offshore facility or any port or place in the United States or to the navigable waters, or (B) detain at such a facility or port or place, any vessel which, upon request, does not produce the certification required under this subsection or the regulations issued under this subsection.

(b) OFFSHORE FACILITIES.—Each responsible party with respect to an offshore facility shall establish and maintain evidence of financial responsibility sufficient to meet the maximum amount of liability to which the responsible party could be subjected under section 102 in any case in which the responsible party would be entitled to limit liability under section 102. In any case in which a person is the responsible party for more than one facility subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to one such facility.

(c) METHODS OF FINANCIAL RESPONSIBILITY.—Financial responsibility under this section may be established by any one or any combination of the following methods which the Secretary determines to be acceptable: evidence of insurance, surety bond, guarantee, letter of credit, qualification as a self-insurer, or other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In establishing requirements under this section, the Secretary is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary, or which are unacceptable, in establishing evidence of financial responsibility in order to effectuate the purposes of this Act.

(d) CLAIMS AGAINST GUARANTOR.—Any claim for which liability may be established under section 102 against a responsible party may be asserted directly against any guarantor providing evidence of financial responsibility for such responsible party. In defending against such a claim, the guarantor may invoke all rights and defenses which would be available to the responsible party under section 102. The guarantor may also invoke the defense that the incident was caused by the willful misconduct of the responsible party, but the guarantor may not invoke any other defense that might be available in proceedings brought by the responsible party against the guarantor.

(e) LIMITATION ON GUARANTOR'S LIABILITY.—Nothing in this Act shall impose liability with respect to an incident on any guarantor for damages or removal costs which exceeds, in the aggregate, the amount of financial responsibility required under this Act which the guarantor has provided for the responsible party for any vessel or facility which was a source or cause of the incident.

(f) CIVIL PENALTY.—

(1) **In general.**—Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of this section or the regulations issued under this section, or with a denial or detention order issued under subsection (a)(3) of this section, shall be liable to the United States for a civil penalty, not to exceed $25,000 per day of violation.

(2) **Notice.**—The amount of the civil penalty under this subsection shall be assessed by the Secretary by written notice.

(3) **Factors to consider.**—In determining the amount of a civil penalty under this subsection, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation, the degree of culpability, any history of prior violation, ability to pay, and such other matters as justice may require.

(4) **Compromise.**—The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this subsection.

(5) **Collection.**—If any person fails to pay a civil penalty assessed under this subsection after it has become final, the Secretary may refer the matter to the Attorney General for collection.

(6) **Judicial relief.**—In addition to, or in lieu of, assessing a penalty under this subsection, the Secretary may request the Attorney General to secure such relief as necessary to compel compliance with this section, including a judicial order terminating operations. The district courts of the United States shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

(g) **Continuation of Regulations.**—Any regulation respecting financial responsibility which has been issued pursuant to any provision of law repealed or superseded by this Act and which is in effect on the date immediately preceding the effective date of this Act shall be deemed and construed to be a regulation issued pursuant to this section. Such a regulation shall remain in full force and effect unless and until superseded by new regulations issued under this section.

(h) **Unified Certificate.**—The Secretary may issue to a responsible party one certificate of financial responsibility for purposes of meeting the financial responsibility requirements of this Act and any other law.

### SEC. 108. LITIGATION, JURISDICTION, AND VENUE.

(a) **Review of Regulations.**—Review of any regulation issued under this Act may be had upon application by any interested person only in the Court of Appeals for the District of Columbia Circuit. Any such application shall be made within 90 days after the date of issuance of such regulation.

(b) **Jurisdiction.**—Except as provided in subsection (a), the district courts shall have original jurisdiction, without regard to the citizenship of the parties or the amount in controversy, over any civil action under this Act, including any action under the International Convention on Civil Liability for Oil Pollution Damages, 1984 or the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984.

(c) **Venue.**—A civil action under subsection (b) may be brought in any district in which—

(1) the incident, injury, or damages occurs; or

(2) the defendant resides, may be found, has its principal office, or has appointed an agent for service of process.

For purposes of this section, the Fund and the International Fund established under Article 2 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984, reside in the District of Columbia.

(d) **Savings Provision.**—Nothing in this Act shall affect any action commenced before the date of the enactment of this Act.

(e) **Period of Limitations.**—

(1) **Damages.**—Except as provided in paragraphs (3) and (4), a civil action for damages under this Act, shall be barred unless the action is brought within 3 years after—

(A) the date on which the loss and the connection of the loss with the discharge in question are reasonably discoverable with the exercise of due care, or

(B) in the case of damages described in section 102(a)(2)(B)(i), the date on which regulations are issued under section 102(e)(5), if that date is later than the date referred to in subparagraph (A).

(2) **Removal costs.**—Except as provided in paragraphs (3) and (4), a civil action for recovery of removal costs under this Act shall be barred unless the

action is brought within 3 years after completion of the removal. An action may be commenced under section 102 for recovery of removal costs at any time after such costs have been incurred.

(3) CONTRIBUTION.—A civil action for contribution for any removal costs or damages shall be barred unless the action is brought within 3 years after—

(A) the date of judgment in any action under this Act for recovery of the costs or damages, or

(B) the date of entry of a judicially approved settlement with respect to the costs or damages.

(4) SUBROGATION.—A civil action based on rights subrogated pursuant to this Act by reason of payment of a claim shall be barred unless the action is commenced within 3 years after the date of payment of the claim.

### SEC. 109. RELATIONSHIP TO OTHER LAW.

(a) PREEMPTION.—

(1) ACTIONS PREEMPTED.—Except as provided in this Act, no action arising out of a discharge of oil, or a substantial threat of a discharge of oil, from a vessel or facility into or upon the navigable waters or adjoining shorelines or the waters of the exclusive economic zone (other than an action for personal injury or wrongful death), may be brought in any court of the United States or of any State or political subdivision thereof.

(2) STATE FUNDS AND ACCOUNTS.—Nothing in this Act or in sections 4611 and 9509 of the Internal Revenue Code of 1986 shall affect the authority of any State (A) to establish or continue in effect an oil spill fund or account; or (B) to require any person to contribute to that fund or account. However, if the State fund or account is supported by contributions levied upon persons who contribute to the Fund established by section 9509 of such Code, the State fund or account may not be used to compensate any person for damages under this Act.

(b) NO PREEMPTION OF PENALTIES.—Nothing in this Act or section 9509 of the Internal Revenue Code of 1986 shall affect the authority of the United States or any State or political subdivision thereof to impose, or to determine the amount of, any fine or penalty for any violation of law relating to an incident.

(c) FINANCIAL RESPONSIBILITY.—Except as provided in this Act, a responsible party for a vessel or facility who establishes and maintains evidence of financial responsibility in accordance with this title shall not be required under any State or local law, rule, or regulation to establish or maintain any other evidence of financial responsibility in connection with liability for the discharge, or substantial threat of a discharge, of oil from such vessel or facility. Evidence of compliance with the financial responsibility requirements of this title shall be accepted by a State in lieu of any other requirement of financial responsibility imposed by such State in connection with liability for the discharge of oil from such vessel or facility. A State may enforce, on the navigable waters of the State, the requirements for evidence of financial responsibility imposed under section 107 of this Act.

(d) LIMITATION OF LIABILITY ACT.—The Act entitled "An Act to limit the liability of ship owners, and for other purposes", approved March 3, 1851 (9 Stat. 635), shall not apply to removal costs which arise out of or directly result from, and damages which are proximately caused by, an incident involving the discharge or substantial threat of discharge of oil.

### SEC. 110. REGULATIONS.

The Secretary shall issue such regulations as may be necessary to carry out this title.

### SEC. 111. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this title shall apply with respect to an incident occurring after the date of the enactment of this Act.

(b) PAYMENTS FROM FUND.—Payments under section 103(a) may not be made before the commencement date (as such term is defined in section 4611(f)(2) of the Internal Revenue Code of 1986).

## TITLE II—PREVENTION AND RESPONSE

### SEC. 201. AUTHORITY TO DIRECT RESPONSES.

(a) GENERAL RULE.—In the event of a discharge of oil or a substantial threat of discharge of oil into or upon navigable waters or adjoining shorelines or the waters of the exclusive economic zone, the Secretary or the Administrator of the Environmental Protection Agency, as determined by the President, shall assume the direction of all Federal, State, and private activities regarding the containment, cleanup, removal, and other responses to the discharge or threat of discharge.

(b) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as affecting the assessment of liability under this Act with respect to the discharge or substantial threat of discharge of oil and shall be construed as affecting or diminishing the authority of the President under section 311(c)(1) of the Federal Water Pollution Control Act, relating to removal of discharged oil.

### SEC. 202. RESPONSE PLANS.

(a) DESIGNATION.—

(1) DEADLINE.—Not later than 180 days after the date of the enactment of this Act, the Secretary or the Administrator of the Environmental Protection Agency, as determined by the President, shall designate those areas for which plans for responding to discharges and substantial threats of discharges of oil are required to be prepared under this section, the persons (including Federal, State, and local officials) who are required to prepare such plans, and the persons who are required to pay for the preparation of such plans.

(2) CONSULTATION.—In designating areas for which plans are required to be prepared under this section and the persons to be required to prepare such plans, the Secretary or the Administrator, as the case may be, shall consult concerned State officials.

(b) CRITERIA FOR DESIGNATION OF AREAS.—In determining those areas for which plans for responding to discharges and substantial threats of discharges of oil are required to be prepared under this section, the Secretary or the Administrator of the Environmental Protection Agency, as the case may be, shall consider the following:

(1) The likelihood of a discharge or substantial threat of a discharge of oil in the area.

(2) The likelihood of significant adverse effects resulting from discharges or substantial threats of discharges of oil in the area.

(3) The amount and type of oil handled, stored, or processed in the area.

(4) The presence of natural resources in the area which are likely to be damaged by a discharge of oil and the value, uniqueness, and susceptibility of such resources to damage by such discharge.

(5) The geographic, topographic, weather, and other conditions which might influence the frequency, severity, and effects of oil discharges and responses thereto.

(c) PREPARATION OF PLANS.—

(1) DEADLINE.—Not later than 180 days after the date of designation of an area under subsection (a), the persons designated under subsection (a) shall prepare and submit, in writing, to the Secretary or the Administrator of the Environmental Protection Agency, as the case may be, for approval a plan for responding to discharges and substantial threats of discharges of oil in the area. Plans approved under this section must be reviewed on a periodic basis.

(2) CONTENTS.—Each response plan prepared under this section shall include the following:

(A) A description of the general area in which response actions will be required to be taken pursuant to the plan.

(B) The responsibilities of responsible parties, State and local governments, and others in responding to discharges and substantial threats of discharges of oil.

(C) Such other matters as the Secretary or the Administrator, as the case may be, may require.

(3) CONSULTATION REQUIREMENT.—Concerned States and local governments shall be consulted in the preparation of each plan under this subsection.

(4) TECHNICAL ASSISTANCE.—The Secretary or the Administrator, as the case may be, may provide technical assistance in the preparation of a response plan under this subsection.

(d) FUNDING.—All expenses incurred by the Secretary, and all expenses incurred by the Administrator of the Environmental Protection Agency, in carrying out this section shall be paid for out of the Fund.

### SEC. 203. REVIEW AND REVISION OF RESPONSE CAPABILITY.

(a) EVALUATION.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Secretary or the Administrator of the Environmental Protection Agency, as determined by the President, shall conduct an evaluation of the status and effectiveness of personnel and equipment for responding to dis-

charges of oil or substantial threats of discharges of oil into or upon the navigable waters and adjoining shorelines and the waters of the exclusive economic zone. The evaluation shall determine, on a regional basis, whether or not existing personnel and equipment are sufficient for responding to such discharges or threats in an effective and timely manner and the need for teams (including necessary equipment, personnel, and vessels) to respond to and minimize damage from those discharges or substantial threats of discharges occurring in the general regions of Alaska, the Pacific Northwest, California, the Gulf of Mexico, the Great Lakes, the North Atlantic, the South Atlantic, Hawaii, and inland waters of the United States.

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary and the Administrator shall each submit a report to Congress based on the findings of their respective evaluations conducted under this subsection, together with recommendations.

(b) TRAINING.—Not later than 1 year after the date of the enactment of this Act, the Secretary or the Administrator of the Environmental Protection Agency, as determined by the President, shall revise the national contingency plan issued under section 311(c)(2) of the Federal Water Pollution Control Act and shall issue such regulations as may be necessary, to require oil response personnel to be subjected to—

(1) training approved by the Secretary or the Administrator, as the case may be; and

(2) periodic drills, without prior notice, to demonstrate the continued effectiveness and readiness of oil response teams.

(c) CERTIFICATION.—Not later than 6 months after the date of the submission of the report under subsection (a), the Secretary or the Administrator of the Environmental Protection Agency, as the case may be, shall issue regulations requiring inspection of equipment for responding to discharges of oil and substantial threats of discharges of oil into the navigable waters and adjoining shorelines and the waters of the exclusive economic zone. Such equipment includes containment booms, skimmers, response vessels, and buoys. The regulations shall require the submission to the Secretary or the Administrator of such information as the Secretary or the Administrator may require for obtaining certification by the Secretary or the Administrator not less than once every 3 years to ensure the equipment is maintained in working condition. The Secretary and the Administrator shall each take such actions as may be necessary to make their respective certifications under this subsection and to enforce this subsection, including the regulations issued by them respectively.

(d) UPGRADING OF PERSONNEL AND EQUIPMENT.—

(1) BY OWNERS AND OPERATORS.—Not later than 6 months after the date of the submission of the report under subsection (a), the Secretary or the Administrator of the Environmental Protection Agency, as the case may be, shall issue regulations which require owners and operators of vessels and facilities to take (within 6 months after the date of the issuance of such regulations) such action as may be necessary to ensure that sufficient personnel and equipment are available, on a regional and collective basis, for responding to discharges of oil and substantial threats of discharges of oil described in the first sentence of subsection (a) in an effective and timely manner.

(2) BY THE UNITED STATES.—If owners and operators of vessels and facilities have not taken all actions required by the Secretary or the Administrator, as the case may be, under paragraph (1) within 6 months after the date of the issuance of regulations by the Secretary or the Administrator under paragraph (1), the Secretary or the Administrator shall take such actions as may be necessary to ensure that sufficient personnel and equipment for responding to discharges of oil and substantial threats of discharges of oil described in the first sentence of subsection (a) in an effective and timely manner are available on a regional and collective basis.

(e) FUNDING.—All expenses incurred by the Secretary, and all expenses incurred by the Administrator of the Environmental Protection Agency, in carrying out this section shall be paid for out of the Fund.

### SEC. 204. COMPUTER LISTING OF EMERGENCY RESPONSE RESOURCES AND AVAILABILITY OF AGENCY DATA.

(a) ESTABLISHMENT OF COMPUTER LISTING.—Not later than 1 year after the date of the enactment of this section, the National Response Center shall (in consultation with State officials responsible for removal of oil from navigable waters and adjoining shorelines and the waters of the exclusive economic zone) establish, maintain, and annually revise a comprehensive nationwide computer listing of emergency response resources which are available to and appropriate for use in responding to discharges and substantial threats of discharges of oil.

(b) CONTENTS OF COMPUTER LISTING.—The computer listing established under this section shall include—

(1) a continually updated description of all Federal, State, local, and private emergency response resources which are available for use, including—

(A) the locations and capabilities of the resources;

(B) specification of the suitability of each resource for use in rivers, harbors, open ocean, and calm waters; and

(C) specification of the suitability of each resource for use in fresh water and in salt water;

(2) a nationwide listing of persons having emergency response resources available for sale or lease, including—

(A) each such person's address, telephone number, and hours of business; and

(B) a description of the types and capabilities of their resources;

(3) a listing of the names, telephone numbers, and areas of expertise of persons residing in the vicinity of areas covered by the National Contingency Plan who are experts in—

(A) responding to discharges or the substantial threats of discharges of oil; or

(B) the effects of such discharges or threats.

(c) INFORMATION ACCESS.—The National Response Center shall provide continuous access to information contained in the listing established under this section to—

(1) each regional response team;

(2) each regional response center;

(3) each on-scene coordinator; and

(4) all State and local government officials responsible for directing State or local governmental response to discharges and substantial threats of discharges of oil.

(d) READY ACCESSIBILITY.—The head of each Federal agency having a representative on the National Response Team shall ensure that, during all periods of activation of the National Contingency Plan, all persons described in subsection (c) with respect to the activation have ready accessibility to all relevant data in the possession of such agency (other than classified data) regarding the geographic, oceanographic, hydrologic, natural resource, and meteorological characteristics of the navigable waters or adjoining shorelines and the waters of the exclusive economic zone for which the National Contingency Plan is activated.

(e) INTERNATIONAL INVENTORY.—The President shall take such actions as may be necessary to encourage appropriate international organizations to establish an international inventory of emergency response resources.

(f) DEFINITIONS.—For purposes of this section—

(1) EMERGENCY RESPONSE RESOURCE.—The term "emergency response resource" means all equipment, supplies (including chemical and biological agents), and personnel having special knowledge or expertise, that are particularly useful for responding to a discharge or substantial threat of a discharge of oil.

(2) NATIONAL RESPONSE CENTER, NATIONAL RESPONSE TEAM, REGIONAL RESPONSE CENTER, REGIONAL RESPONSE TEAM, AND ON-SCENE COORDINATOR.—The terms "National Response Center", "National Response Team", "Regional Response Center", "Regional Response Team", and "On-Scene Coordinator" have the meaning such terms have in the National Contingency Plan.

## SEC. 205. VESSEL TRAFFIC SYSTEMS.

(a) NEEDS SURVEY.—The Secretary shall make a survey of areas of navigable waters to determine the needs for new, expanded, or improved vessel traffic systems.

(b) PRIORITY LIST.—

(1) ESTABLISHMENT.—Based on the results of the needs survey conducted under subsection (a), the Secretary shall establish, in order of priority, those areas of navigable waters which are in need of new, expanded, or improved vessel traffic systems.

(2) FACTORS TO CONSIDER.—In determining the order of priority for the list under paragraph (1), the Secretary shall consider such factors as the Secretary determines appropriate, including the nature, volume, and frequency of vessel traffic in the area and the risks of collisions, spills, and damages associated

with such traffic which could be reduced or eliminated by installation, expansion, or improvement of a vessel traffic system.

(c) Report.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit to Congress a report containing the priority list established under this subsection and such other information as the Secretary considers appropriate.

(d) Acquisition, Installation, and Operation.—The Secretary may acquire, install, and operate such equipment and vessel traffic systems as are necessary for making the improvements and expansions contained on the priority list established under this subsection.

(e) Mandatory Participation.—The Secretary shall make participation in vessel traffic systems operated by the Secretary mandatory for such vessels as the Secretary determines appropriate.

(f) Vessel Fees.—

(1) Establishment.—The Secretary shall establish and collect from users of vessel traffic systems operated by the Secretary such fees as the Secretary determines are necessary to pay the cost of acquisition, installation, and operation of vessel traffic systems by the Secretary. Such fees shall be established in accordance with section 9701 of title 31, United States Code.

(2) Use of fees.—Fees collected by the Secretary under this subsection shall be credited and available to the Secretary, without fiscal year limitation, to pay the cost of acquisition, installation, and operation of vessel traffic systems by the Secretary.

(3) Limitations on statutory construction.—Nothing in this subsection shall be construed as altering or expanding the duties and liabilities of the United States for the performance of functions or services for which fees are collected under this subsection. The collection of such fees shall not constitute an express or implied undertaking by the United States to perform any service or activity in a certain manner or to provide any service at a particular time or place.

(g) Direction of Vessel Movement.—

(1) Study.—The Secretary shall conduct a study of whether or not the Secretary should be given additional authority to direct the movement of vessels upon navigable waters and should exercise such authority.

(2) Report.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the results of the study conducted under paragraph (1) together with recommendations for implementing the results of such study.

### SEC. 206. NAVIGATIONAL AIDS.

(a) Study.—The Secretary shall conduct a study to determine the areas in which navigation risks are sufficient to require tug escorts of tankers or other navigation aids to improve the safe movement of tankers.

(b) Report.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the results of the study conducted under subsection (a) together with recommendations for implementing the results of such study.

(c) Implementation.—The Secretary shall issue such regulations and take such actions as may be necessary to implement the recommendations contained in the report submitted to Congress under this section.

### SEC. 207. PERIODIC GAUGING OF PLATING THICKNESS OF COMMERCIAL VESSELS.

Not later than 1 year after the date of the enactment of this Act, the Secretary shall issue regulations—

(1) establishing minimum standards for the plating thickness of vessels transporting oil in bulk or commercial quantities, and

(2) requiring periodic gauging of the plating thickness of all vessels over 30 years old which are used to transport oil in bulk or commercial quantities upon the navigable waters or the waters of the exclusive economic zone.

### SEC. 208. OVERFILL AND TANK LEVEL OR PRESSURE MONITORING DEVICES.

(a) Standards.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall establish, by regulation, minimum standards for devices for warning persons of overfills and tank levels of oil in cargo tanks and devices for monitoring the pressure of oil cargo tanks.

(b) Use.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall issue regulations establishing requirements concerning the use of—

(1) overfill devices, and

(2) tank level or pressure monitoring devices,

which are referred to in subsection (a) and which meet the standards established by the Secretary under subsection (a), on vessels transporting oil in bulk or commercial quantities upon the navigable waters and the waters of the exclusive economic zone.

### SEC. 209. TANKER PERSONNEL.

(a) STUDY.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall conduct a study for the purpose of determining appropriate crew sizes for tankers and qualifications of personnel on such tankers.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the results of the study conducted under subsection (a) together with recommendations for implementing the results of such study.

### SEC. 210. USE OF LINERS.

(a) STUDY.—The Administrator of the Environmental Protection Agency shall conduct a study to determine whether or not liners should be used as a secondary means of containment at onshore facilities used for the bulk storage of oil and located near navigable waters to prevent leaching of oil into the ground and to aid in leak detection.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Administrator of the Environmental Protection Agency shall submit to Congress a report on the results of the study conducted under subsection (a) together with recommendations for implementing the results of such study.

(c) IMPLEMENTATION.—The Administrator of the Environmental Protection Agency shall issue such regulations and take such actions as may be necessary to implement the recommendations contained in the report submitted to Congress under this section.

### SEC. 211. MODIFICATIONS TO DREDGES.

(a) STUDY.—The Secretary of the Army shall conduct a study for the purpose of determining the feasibility of modifying dredges for the purpose of making such dredges usable in responding to a discharge of oil or the substantial threat of a discharge of oil.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary of the Army shall submit to Congress a report on the results of the study conducted under subsection (a) together with recommendations for implementing the results of such study.

### SEC. 212. TANKER FREE ZONES.

(a) STUDY.—The Secretary, in consultation with other appropriate Federal and State officials, shall conduct a study of whether or not to designate areas of the navigable waters and exclusive economic zone as zones where the movement of tankers should be prohibited or limited. If the Secretary, as a result of such study, determines that such zones should be designated, the Secretary shall also study which areas to designate as such zones, and what limitations to impose on tanker traffic in any zones so designated, taking into consideration the following: existing navigational risks based on geography, weather, and volume of traffic; potential for danger to natural resources; and availability of alternative methods for transporting oil (such as deepwater port facilities).

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the results of the study conducted under subsection (a) together with recommendations for implementing the results of such study.

### SEC. 213. SUPERIORITY OF FEDERAL PILOTS' LICENSES.

(a) STUDY.—The Secretary shall conduct a study to determine whether or not licenses issued by the Secretary authorizing persons to serve as pilots of commercial vessels operating on the navigable waters should be legally superior to licenses issued by the States for such purposes.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the results of the study conducted under subsection (a) together with recommendations for implementing the results of such study.

### SEC. 214. RESEARCH AND DEVELOPMENT PROGRAM.

(a) ESTABLISHMENT.—The President shall establish a program for conducting oil pollution research and development under this section and designate appropriate Federal agencies to participate in such program.

(b) General Purposes.—The purposes of the research and development program under this section includes the following:

(1) Development of new or improved methods to contain discharges of oil from vessels and facilities. Such methods must minimize health risks to persons who will have responsibility for containing such discharges.

(2) Development of new or improved methods (including the use of dispersants and bioremediation) for oil recovery, cleanup, and disposal which are effective and protect the environment.

(3) Development of effective models to predict the effects of discharges of oil and the fate of such oil, including the development of baseline data necessary for determining such effects.

(4) Development of technologies and methods to protect public health and safety from discharges of oil (including the population directly exposed to an oil discharge and response personnel performing cleanup activities).

(5) Development of new or improved methods to ensure the health and safety of response personnel performing cleanup activities.

(6) Development of adequate worker training standards for oil discharge response personnel.

(7) Development of new or improved methods to restore and rehabilitate natural resources damaged by discharges of oil.

(8) Determination of long-term effects of discharges of oil on fish and wildlife.

(c) Specific Research and Development Projects.—

(1) Vessel design and construction criteria.—Under the program established under this section, the President shall direct the Secretary to conduct research on changes in vessel design and construction criteria (such as tank size, vessel size, double hulls, and ballast sides) for the purpose of reducing the likelihood of discharges of oil.

(2) Technology.—Under the program established under this section, the President shall direct the Secretary and the Administrator of the Environmental Protection Agency to conduct a joint research and development program for improving technology to prevent discharges of oil and minimize the size of such discharges. The technologies examined under such research and development program shall include technologies for measuring the ullage of a vessel, preventing discharges from tank vents, preventing discharges during lightering and bunkering operations, and containing discharges on the deck of a vessel.

(d) Annual Reports.—The President shall submit to Congress an annual report on the activities carried out under this section in the preceding fiscal year and on activities the President proposes to carry out under this section in the current fiscal year.

(e) Funding.—For carrying out the purposes of this section, there is authorized to be appropriated from the Fund $10,000,000 for fiscal year 1991, $10,000,000 for fiscal year 1992, $7,500,000 for fiscal year 1993, $5,000,000 for fiscal year 1994, and $5,000,000 for fiscal year 1995.

### SEC. 215. CONSIDERATION OF ALCOHOL ABUSE.

(a) Issuance and Renewal of Licenses, Certificates of Registry, and Merchant Mariner Documents.—

(1) In general.—Chapter 71 of title 46, United States Code, is amended by adding at the end the following:

**"§7115. Consideration of alcohol abuse in issuing and renewing licenses and certificates of registry**

"(a) Limitation on Issuance of Licenses and Certificates.—The Secretary may not issue or renew a license or certificate of registry under this chapter for any individual who—

"(1) the Secretary determines is a current or chronic abuser of alcohol; or

"(2) fails to make available to the Secretary the information referred to in subsection (b).

"(b) Driving Record Information.—The Secretary shall require each individual applying for issuance or renewal of a license or certificate of registry under this chapter to make available to the Secretary, in accordance with section 206(b)(4) of the National Driver Register Act of 1982 (23 U.S.C. 401 note), all information contained in the National Driver Register regarding the motor vehicle driving record of such individual.

"(c) Investigations.—Upon receiving reliable information that an individual applying for issuance or renewal of a license or certificate of registry under this chapter has been found guilty of an alcohol-related infraction resulting in suspension or revocation of a motor vehicle operator license issued to the individual, the Secretary may conduct such investigations as are necessary to determine if the individual is a current or chronic abuser of alcohol.".

(2) CLERICAL AMENDMENTS.—The item relating to chapter 71 contained in the table of sections for title 46, United States Code. and the chapter analysis for chapter 71 of such title are each amended by adding at the end the following:

"7115. Consideration of alcohol abuse in issuing and renewing licenses and certificates of registry.".

(b) CERTIFICATES OF REGISTRY.—Section 7107 of title 46, United States Code, is amended by striking the first sentence and inserting the following: "The Secretary shall determine the term of validity of a certificate of registry. Such a certificate may be renewed under regulations issued by the Secretary.".

(c) MERCHANT MARINER'S DOCUMENTS.—Section 7302 of title 46, United States Code, is amended by adding at the end the following:

"(c) LIMITATION ON ISSUANCE OF DOCUMENTS.—The Secretary may not issue or renew a merchant mariner's document under this chapter for any individual who—

"(1) the Secretary determines is a current or chronic abuser of alcohol; or

"(2) fails to make available to the Secretary the information referred to in subsection (d).

"(d) DRIVING RECORD INFORMATION.—The Secretary may require each individual applying for issuance or renewal of a merchant mariner's document under this chapter to make available to the Secretary, in accordance with section 206(b)(4) of the National Driver Register Act of 1982 (23 U.S.C. 401 note), all information contained in the National Driver Register regarding the motor vehicle driving record of such individual.

"(e) INVESTIGATIONS.—Upon receiving reliable information that an individual applying for issuance or renewal of a merchant mariner's document under this chapter has been found guilty of an alcohol-related infraction resulting in suspension or revocation of a motor vehicle operator license issued to the individual, the Secretary may conduct such investigations as are necessary to determine if the individual is a current or chronic abuser of alcohol.

"(f) PERIOD OF VALIDITY.—The Secretary shall determine the term of validity of a merchant mariner's document. Such documents may be renewed under regulations issued by the Secretary.".

(d) SUSPENSION AND REVOCATION OF LICENSES, CERTIFICATES, AND DOCUMENTS.—Section 7703 of title 46, United States Code, is amended—

(1) by inserting "(a)" before the first sentence; and

(2) by adding at the end the following:

"(b) SUSPENSIONS FOR ALCOHOL ABUSE.—

"(1) IN GENERAL.—The Secretary may suspend or revoke a license, certificate of registry, or merchant mariner's document issued by the Secretary to an individual if—

"(A) the Secretary determines the individual is a current or chronic abuser of alcohol; or

"(B) the individual fails to make available to the Secretary the information referred to in paragraph (3).

Any determination of the Secretary to suspend or revoke the license, certificate of registry, or merchant mariner's document of an individual under this paragraph shall be based on the severity of abuse of alcohol by the individual and the length of time necessary to control that abuse.

"(2) INVESTIGATIONS.—The Secretary may conduct such investigations as are necessary to determine if an individual who holds a license, certificate of registry, or merchant mariner's document issued by the Secretary is a current or chronic abuser of alcohol if the Secretary receives reliable information—

"(A) regarding any alcohol-related misconduct of the individual; or

"(B) pursuant to paragraph (3) that the individual has been found guilty of an alcohol-related infraction resulting in suspension or revocation of a motor vehicle operator license issued to the individual.

"(3) DRIVING RECORD INFORMATION.—The Secretary may request an individual who holds a license, certificate of registry, or merchant mariner's document issued by the Secretary to make available to the Secretary, in accordance with section 206(b)(4) of the National Driver Register Act of 1982 (23 U.S.C. 401 note), all information contained in the National Driver Register regarding the motor vehicle driving record of such individual.

"(4) LIMITATION ON SUSPENSION TERMINATIONS.—The Secretary may not terminate a suspension of a license, certificate of registry, or merchant mariner's document of an individual under paragraph (1)(A) until the individual provides sufficient proof that the individual is no longer a current or chronic abuser of alcohol.".

(e) Relief of Master.—Section 8101 of title 46, United States Code, is amended by adding at the end the following new subsection:

"(i) Relief of Master.—If the chief mate or equivalent and the next senior crewmember on board a vessel determine that reasonable cause exists to believe that the master or individual in command is intoxicated as a result of the use of dangerous drugs (as defined in section 7704) or alcohol and is therefore incapable of commanding the vessel, the chief mate shall temporarily relieve the master and temporarily assume command of the vessel and shall immediately enter the details in the vessel log and report such details to the Secretary by the most expeditious means available. The chief mate shall also report the circumstances in writing to the Secretary within 12 hours after the vessel arrives at its destination.".

(f) Regulations.—The Secretary is authorized to issue such regulations as may be necessary to implement the amendments made by this section.

### SEC. 216. ACCESS TO NATIONAL DRIVER REGISTER.

(a) In General.—Section 206(b) of the National Driver Register Act of 1982 (23 U.S.C. 401 note) is amended—

(1) by redesignating paragraph (4) and the first paragraph (5) as paragraphs (6) and (7), respectively;

(2) by redesignating the second paragraph (5), relating to locomotive operators, as paragraph (4) and moving such paragraph after paragraph (3);

(3) by inserting after the paragraph which is redesignated and moved under paragraph (2) of this subsection the following new paragraph:

"(5) Seaman certificates.—Any individual who has applied for or received a license or certificate of registry in accordance with section 7101 of title 46, United States Code, or a merchant mariner's document in accordance with section 7302 of title 46, United States Code, or has applied for a renewal of such license, certificate of registry, or document, may request the chief driver licensing official of a State to transmit information regarding the individual under subsection (a) to the Secretary. The Secretary may receive such information and shall, prior to using such information in any adverse action regarding the individual's license, certificate of registry, or document, make such information available to the individual for review and written comment. The Secretary may not otherwise divulge or use such information, except in accordance with section 7115, 7302, or 7703 of title 46, United States Code. There shall be no access to information in the Register under this paragraph if such information was entered in the Register more than 5 years before the date of such request, unless such information relates to revocations or suspensions which are still in effect on the date of the request. Information submitted to the Register by States under the Act of July 14, 1960 (74 Stat. 526), or under this Act shall be subject to access for the purpose of this paragraph during the transition to the Register established under section 203(a) of this Act.".

(b) Conforming Amendment.—Section 208 of such Act is amended by striking "an individual described" and all that follows through "title, who" and inserting "an individual described in section 206(b)(6) of this title, who".

## TITLE III—IMPLEMENTATION OF INTERNATIONAL CONVENTIONS

### SEC. 301. DEFINITIONS.

For the purposes of this title—

(1) Ship, owner, oil, pollution damage, and incident.—The terms "ship", "owner", "oil", "pollution damage", and "incident" shall have the meanings provided in Article I of the Civil Liability Convention.

(2) Civil liability convention.—The term "Civil Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1984.

(3) Financial responsibility.—The term "financial responsibility" has the same meaning as "financial security" under the Civil Liability Convention.

(4) Fund convention.—The term "Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984.

(5) International fund.—The term "International Fund" means the International Oil Pollution Compensation Fund established under Article 2 of the Fund Convention.

### SEC. 302. APPLICABILITY OF CONVENTIONS.

During any period in which the Civil Liability Convention and the Fund Convention are in force with respect to the United States, liability relating to pollution damage arising from an incident involving a ship shall be determined in accordance with the Civil Liability Convention and the Fund Convention. Nothing in this title shall constitute a ratification of either the Civil Liability Convention or the Fund Convention.

### SEC. 303. RECOGNITION OF INTERNATIONAL FUND.

The International Fund is recognized under the laws of the United States as a legal person and shall have the capacity to acquire and dispose of real and personal property and to institute and be party to legal proceedings. The Director of the International Fund is recognized as the legal representative of the International Fund. The Director shall be deemed to have appointed irrevocably the Secretary of State as the International Fund's agent for the service of process in any legal proceedings within the United States involving the International Fund. The International Fund and its assets shall be exempt from all direct taxation and payment of any customs duties in the United States.

### SEC. 304. ACTION IN UNITED STATES COURTS.

(a) SERVICE OF PROCESS ON FUND.—In any action brought in a court in the United States against the owner of a ship or its guarantor under the Civil Liability Convention, the plaintiff or defendant, as the case may be, shall serve a copy of the complaint and any subsequent pleading therein upon the International Fund at the same time the complaint or other pleading is served upon the opposing parties.

(b) INTERVENTION.—The International Fund may intervene as a party as a matter of right in any action brought in a court in the United States against the owner of a ship or its guarantor under the Civil Liability Convention.

### SEC. 305. CONTRIBUTION TO INTERNATIONAL FUND.

(a) PAYMENTS TO BE MADE FROM OIL SPILL LIABILITY TRUST FUND.—The amount of any contribution to the International Fund which is required to be made under Article 10 of the Fund Convention by any person with respect to oil received in any port, terminal installation, or other installation located in the United States shall be paid to the International Fund from the Oil Spill Liability Trust Fund.

(b) INFORMATION.—The Secretary may, by regulation, require persons who are required to make contributions with respect to oil received in any port, terminal, or other installation in the United States under Article 10 of the Fund Convention to provide all information relating to the oil as may be necessary to carry out subsection (a) of this section, Articles 10, 12, 13, 14, and 15 of the Fund Convention, and Article 29 of the Protocol of 1984 to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971.

### SEC. 306. RECOGNITION OF FOREIGN JUDGMENTS.

Any final judgment of a court of any country which is a party to the Civil Liability Convention or to the Fund Convention in an action for compensation under either convention shall be recognized by any court of the United States having jurisdiction under this Act, when the judgment has become enforceable in such country and is no longer subject to ordinary form of review, except where—

(1) the judgment was obtained by fraud, or

(2) the defendant was not given reasonable notice and a fair opportunity to present its case.

### SEC. 307. FINANCIAL RESPONSIBILITY.

(a) UNITED STATES DOCUMENTED SHIPS.—The owner of each ship which is documented under the laws of the United States which is subject to the Civil Liability Convention shall establish and maintain, in accordance with regulations issued by the Secretary, evidence of financial responsibility as required in Article VII of the Civil Liability Convention.

(b) OTHER SHIPS.—The owner of each ship (other than a ship to which subsection (a) applies or a ship which is a public vessel) which is subject to the Civil Liability Convention and which enters or leaves a port or terminal in the United States or uses an Outer Continental Shelf facility or an offshore facility that is or was licensed under the Deepwater Port Act of 1974 shall establish and maintain, in accordance with regulations issued by the Secretary, evidence of financial responsibility as required in Article VII of the Civil Liability Convention. Any ship which has on board a valid certificate issued in accordance with Article VII of the Civil Liability Convention shall be considered as having met the requirements of this subsection. Any ship carrying only oil as cargo, fuel, or residue, which has on board a valid certificate issued in accordance with Article VII of the Civil Liability Convention shall be considered as having met the requirements of section 107 of this Act.

(c) AUTHORITY OF SECRETARY TO ISSUE.—The Secretary is authorized to issue any certificate of financial responsibility which the United States may issue under the Civil Liability Convention.

(d) WITHHOLDING CLEARANCE.—The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91) of any ship which does not have a certificate demonstrating compliance with this section.

(e) DENYING ENTRY AND DETAINING VESSELS.—The Secretary may (1) deny entry to any facility or to any port or place in the United States, or (2) detain at the facility or port or place in the United States, any ship subject to this section which, upon request, does not produce the certificate demonstrating compliance with this section or regulations issued under this section.

(f) CIVIL PENALTY.—Any person who, after notice and an opportunity for a hearing, is found to have violated this section, any regulation issued under this section, section 305(b), or section 308, or any denial or detention order issued under subsection (e) of this section shall be liable to the United States for a civil penalty not to exceed $25,000 per day of violation. The amount of the civil penalty shall be assessed by the Secretary in accordance with the procedures set forth in section 107 of this Act.

(g) WAIVER OF SOVEREIGN IMMUNITY.—The United States waives all defenses based on its status as a sovereign state with respect to any controversy arising under the Civil Liability Convention or the Fund Convention relating to any ship owned by the United States and used for commercial purposes.

### SEC. 308. REGULATIONS.

The Secretary shall issue such regulations as may be necessary to carry out this title and all obligations of the United States under the Civil Liability Convention and the Fund Convention.

## TITLE IV—MISCELLANEOUS PROVISIONS

### SEC. 401. TRANS-ALASKA PIPELINE FUND.

(a) AMENDMENTS TO SECTION 204(b).—Section 204(b) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(b)) is amended—

(1) in the first sentence by inserting after "any area" the following: "in the State of Alaska";

(2) in the first sentence by inserting after "any activities" the following: "related to the trans-Alaska oil pipeline"; and

(3) by adding at the end the following new sentence: "This subsection shall not apply to removal costs covered by the Oil Pollution Prevention, Response, Liability, and Compensation Act of 1989.".

(b) REPEAL OF SECTION 204(c).—Section 204(c) of the Trans-Alaska Pipeline Authorization Act is repealed. The repeal made by the preceding sentence shall not affect the applicability of such section to claims arising before the date of the enactment of this Act. The repeal of paragraphs (4), (6), and (8) of such section shall only become effective upon the payment by the Board of Trustees of the Trans-Alaska Pipeline Liability Fund of all claims certified under subsection (c) of this section.

(c) CERTIFICATION OF OUTSTANDING CLAIMS.—Not later than 210 days after the date of the enactment of this Act, the Board of Trustees of the Trans-Alaska Pipeline Liability Fund shall certify to the Secretary the total amount of claims outstanding against such Fund as of the date of the enactment of this Act.

### SEC. 402. INTERVENTION ON THE HIGH SEAS ACT.

Section 17 of the Intervention on the High Seas Act (33 U.S.C. 1486) is amended to read as follows:

### "SEC. 17. AVAILABILITY OF OIL SPILL LIABILITY TRUST FUND.

"The Oil Spill Liability Trust Fund shall be available to the Secretary for actions taken under sections 5 and 7 of this Act.".

### SEC. 403. FEDERAL WATER POLLUTION CONTROL ACT.

(a) NATIONAL CONTINGENCY PLAN.—Section 311(c)(2) of the Federal Water Pollution Control Act (33 U.S.C. 1321(c)(2)) is amended—

(1) in subparagraph (C) by striking "establishment or designation of a strike force consisting" and inserting "designation, establishment, and maintenance of a strike force consisting of at least 4 teams";

(2) in subparagraph (D) by inserting "safeguard against as well as" after "surveillance and notice designed to";

(3) in subparagraph (F) by inserting "as well as research and development into methods and techniques to improve existing technology" after "removing oil and hazardous substances"; and

(4) in subparagraph (H) by striking "reimbursed from the fund established under subsection (k) of this section for the reasonable costs incurred in such removal" and inserting "reimbursed, in the case of any discharges of oil from a vessel or facility, for the reasonable costs incurred for such removal, from the Oil Spill Liability Trust Fund".

(b) Cleanup Expenses.—Section 311(d) of such Act is amended by striking the last sentence.

(c) Abatement Actions.—Section 311(e) of such Act is amended to read as follows:

"(e) Abatement Actions.—

"(1) President's authority.—In addition to any action taken by a State or local government, when the President determines that there may be an imminent and substantial threat to the public health or welfare of the United States, including fish, shellfish, and wildlife and public and private property, shorelines, and beaches under the jurisdiction or control of the United States, because of an actual or threatened discharge of oil or a hazardous substance from a vessel or facility in violation of subsection (b) of this section, the President may—

"(A) require the Attorney General to secure such relief as may be necessary to abate such threat; or

"(B) after notice to the affected State, take such other action under this section, including issuing such administrative orders, as may be necessary to protect the public health and welfare.

"(2) Enforcement of orders.—If any person fails without sufficient cause to comply with an order under paragraph (1)(B), the President may request the Attorney General to bring an action in the appropriate district court of the United States to enforce such an order, to assess civil penalties of not more than $25,000 a day for each violation, and to assess 3 times the removal costs or damages incurred by the Oil Spill Liability Trust Fund as a result of the failure to comply.

"(3) District court jurisdiction.—The district courts of the United States shall have jurisdiction to grant such relief under this subsection as the public interest and the equities of the case may require.".

(d) Limitation on Applicability To Prevent Overlapping Coverage.—Subsections (f), (g), (h), and (i) of section 311 of such Act shall not apply with respect to any incident with respect to which section 102 of this Act applies.

(e) Recovery From 3rd Parties.—Section 311(i) of such Act is amended by striking "(1)" and striking paragraphs (2) and (3).

(f) Oil Spill Revolving Fund.—

(1) Conforming amendment.—Section 311(k) of such Act is repealed.

(2) Treatment of remaining funds.—Any amounts remaining in the revolving fund established under section 311(k) of the Federal Water Pollution Control Act shall be deposited in the general fund of the Treasury.

(3) Treatment of liabilities.—The Fund shall assume all liability incurred by the revolving fund established under section 311(k) of the Federal Water Pollution Control Act.

(g) Funding of Delegated Authority.—Section 311(l) of the Federal Water Pollution Control Act is amended by striking the second sentence.

(h) Evidence of Financial Responsibility.—Section 311(p) of such Act is repealed.

(i) Availability of Fund.—Section 311 of such Act is amended by adding at the end thereof the following new subsection:

"(s) Availability of Oil Spill Liability Trust Fund.—The Oil Spill Liability Trust Fund shall be available to carry out subsections (c), (d), (i), and (l). Any amounts received by the United States under this section shall be deposited in the Oil Spill Liability Trust Fund.".

(j) Notice to State; Increased Penalty for Failure To Report.—Section 311(b)(5) of such Act is amended—

(1) by inserting after the first sentence the following: "The Federal agency shall immediately notify the appropriate State agency of any State which is, or

may reasonably be expected to be, affected by the discharge of oil or a hazardous substance."; and

(2) by striking "fined not more than $10,000, or imprisoned for not more than one year, or both" and inserting "fined in accordance with the applicable provisions of title 18 of the United States Code, or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both".

(k) INCREASED PENALTY FOR DISCHARGES.—Section 311(b)(6)(A) of such Act is amended by striking "$5,000 for each offense" each place it appears and inserting "$25,000 for each day of such offense".

### SEC. 404. DEEPWATER PORT ACT.

(a) SECTION 4(c).—Section 4(c)(1) of the Deepwater Port Act of 1974 (33 U.S.C. 1503(c)(1)) is amended by striking "section 18(l) of this Act;" and inserting "section 107 of the Oil Pollution Prevention, Response, Liability, and Compensation Act of 1989;".

(b) SECTION 18.—

(1) REPEALS.—Subsections (b), (d), (e), (f), (g), (h), (i), (j), (l), (n), and paragraphs (1) and (2) of subsection (m) of section 18 of such Act (33 U.S.C. 1517) are repealed.

(2) SUBSECTION (c)(3).—Subsection (c)(3) of such section is amended by striking "Deepwater Port Liability Fund established pursuant to subsection (f) of this section", and inserting "Oil Spill Liability Trust Fund".

(3) REDESIGNATIONS.—Subsections (c), (k), and (m) of such section (and any references thereto) are redesignated as subsections (b), (c), and (d) respectively, and paragraphs (3) and (4) of subsection (m) of such section (and any references thereto) are redesignated as paragraphs (1) and (2), respectively.

(c) SECTION 19.—Section 19(a)(1) of such Act (33 U.S.C. 1518(a)(1)) is amended by striking the period at the end of the second sentence and inserting "; except that discharges from a deepwater port or from a vessel within a deepwater port safety zone which are subject to the civil penalty provisions of section 18(a)(2) of this Act shall not be subject to the penalty provisions of any other Federal law.".

(d) DEEPWATER PORT LIABILITY FUND.—Any amounts remaining in the Deepwater Port Liability Fund established under section 18(f) of the Deepwater Port Act of 1974 shall be deposited into the Fund. The Fund shall assume all liability incurred by the Deepwater Port Liability Fund.

### SEC. 405. OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS OF 1978.

Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1811-1824) and the portion of the table of contents for such Act which relates to such title are each repealed. Any amounts remaining in the Offshore Oil Pollution Compensation Fund established under section 302 of such title shall be deposited in the Fund. The Fund shall assume all liability incurred by the Offshore Oil Pollution Compensation Fund.

### SEC. 406. QUALIFIED AUTHORIZING LEGISLATION.

This Act shall be considered to be qualified authorizing legislation for purposes of section 4611(f)(2)(B) of the Internal Revenue Code of 1986.

### SEC. 407. EFFECTIVE DATE.

Sections 401, 402, 403 (other than subsection (j)), 404, and 405 shall be effective on the commencement date (as such term is defined in section 4611(f)(2) of the Internal Revenue Code of 1986).

## INTRODUCTION

H.R. 1465, as reported, provides a comprehensive legislative framework to prevent the spilling of oil into the waters of the United States and to improve our preparedness and ability to respond to an oil spill should one occur. It establishes new authorities and responsibilities for the prevention of oil spills in the first instance, establishes a comprehensive response capability, and assesses significant liability upon the spiller of oil and the oil industry. It also provides for compensation to individuals and entities which suffer economic damage due to a spill.

The Congress has had the issue of oil spill liability compensation legislation pending before it for more than a decade. The House and Senate each have passed oil spill legislation as recently as 1986, but have been unable to resolve the differences in the legislation.

Current legislation to address oil spill cleanup is contained primarily in section 311 of the Federal Water Pollution Control Act. That law provides that a person who discharges into or upon the navigable waters of the United States, adjoining shorelines, or the waters of the contiguous zone is strictly liable, that is liable without reference to fault, to the United States for the removal costs incurred, including restoration or replacement of natural resources damaged or destroyed as a result of the spill.

Section 311 does not impose liability for economic losses and the cleanup fund is authorized at only $35 million and it is funded primarily through appropriations. Recent events indicate that a much larger fund is necessary and that is should be funded by the oil industry and not by general revenues. Such a larger, tax-supported fund was established by Public Law 99-509. Before such a tax can be collected and spent, however, comprehensive legislation such as H.R. 1465 must be enacted.

Other Federal laws which affect the liability for oil spills are the Trans-Alaska Pipeline Authorization Act, the Deepwater Port Act of 1974, and the Outer Continental Shelf Lands Act. These laws also establish liabilities for cleanup and, in addition, allow for the recovery of certain economic losses. The coverage of these Acts is, however, limited and there have not been spills of sufficient magnitude to cause expenditures to be made from their funds.

In addition to the Federal laws, nearly half the states have also enacted some form of oil spill liability and compensation legislation. These laws differ widely in their liability standards, limits of liability, and whether they include funds. For those states which include funds, they are financed by a variety of sources, primarily license fees, excise taxes, or both.

Each year over ten thousand oil spills are reported, which either pollute or threaten to pollute United States waters. Although the majority of these spills are minor and are routinely removed, or require no removal, questions remained whether the current system of Federal and state laws could provide an adequate response to a major spill.

Unfortunately, shortly after midnight on March 24, 1989, the 987-foot tank vessel *Exxon Valdez* struck Bligh Reef in Prince William Sound, Alaska, and spilled nearly 11 million gallons of oil into one of the most pristine and magnificent natural areas of our country. It quickly became apparent that the current levels of oil spill prevention, preparedness, and response were not adequate for such a major spill.

The lack of necessary preparedness for a major spill as demonstrated in Prince William Sound necessitates that improvements be made in the way the nation plans for and reacts to oil spills.

The first line of defense in any oil spill response program must be prevention of a spill in the first instance. For that reason the Committee has included several provisions designed to improve vessel safety, both in the design of the vessels themselves and in vessel traffic. The bill requires the review of vessel designs for future construction and the examination of existing vessels in the interest of maintaining the integrity of the vessel. The bill also requires the examination of establishing tanker free zones, expanding vessel traffic systems, and encouraging methods to avoid the risk of spilling oil into the water. In addition, the bill requires the examination of proper crew sizes on tanker vessels and current and chronic alcohol abuse as a factor which can be used in the suspension, revocation, or the refusal to issue a license, merchant mariner's document, or certificate of registry.

The Committee's review of oil spill preparedness following the *Exxon Valdez* incident clearly demonstrates a lack of preparedness on the part of industry and government. The bill includes provisions to improve contingency planning and training of oil spill response personnel. The planning should incorporate realistic worst case scenarios and include adequate equipment and personnel for a major spill. Organizational responsibility must be clear and these realistic exercises must be a regular part of the contingency planning to be assured that capabilities outlined on paper actually can be met.

The Committee's review also revealed that there is a need for increased research concerning oil spill prevention and response and for the development of new technologies for prevention and response. Oil spill cleanup technology has been a low priority of the United States government in recent years. The bill therefore establishes a new research and development program, to be paid for out of the fund, to improve the status of our knowledge on oil spill prevention and response.

The Committee believes that H.R. 1465 is a proper and balanced response to our Nation's needs both to increase preventive measures against oil spills and to respond to a spill should it occur. In addition, adequate incentives exist to prevent spills on the part of industry through the imposition of strict liability and the enormous economic and ecological damages which could occur because of an oil spill. Finally, the bill addresses the issue of compensation for individuals injured by an oil spill by providing for an assured source of recovery and clearly delineated causes of action for economic damages.

## MISCELLANEOUS

The Committee notes that the issue has been raised whether the costs of cleanup and environmental restoration should be deductible as a business expense thereby reducing an oil spiller's tax liability. The Committee recognizes that matters pertaining to the Internal Revenue Code are the jurisdiction of the Committee on Ways and Means and therefore has not attempted to resolve this issue. The Committee requests the Committee on Ways and Means to review current tax policy of whether oil spill related costs sould continue to be deductible and thereby reduce an oil spiller's tax liability.

The Committee is concerned about a potential problem involving illegal placement of hazardous wastes and other substances into oil pipelines. Accordingly, the Committee directs the Secretary of

Transportation to determine the extent to which hazardous wastes or other substances have been introduced into the pipeline subject to the jurisdiction of the Hazardous Liquid Pipeline Safety Act. Specifically, the Secretary is to determine the extent to which those substances present a threat of damage or injury to individuals, to pipeline facilities, or to facilities where crude oil is refined; or are otherwise incompatible with normal petroleum refining operations.

In this determination, the Secretary should consider the types and amounts of such substances which have been introduced, the types of damage they may have caused or could cause to individuals, pipelines and refining facilities, and the conditions under which such substances have been introduced into pipelines. Among the substances to be considered are solvents, salts, metals, and chlorinated or oxygenated hydrocarbons. The Secretary should consult the Administrator of the Environmental Protection Agency and the Secretary of Energy to determine the extent such introduction is currently regulated under federal and state statutes. The Committee would expect the Secretary to report back to Congress no later than twelve months after date of enactment of the bill.

The Committee also directs the Secretary to identify the substances and quantities of those substances which the Secretary determines pose an unreasonable threat of damage or injury to individuals, pipeline facilities, or facilities where crude oil is refined, or which are incompatible with normal petroleum refining operations. This determination would not cover substances to the extent that they naturally occur in crude oil or to substances which do not pose an unreasonable threat of damage to pipeline or refining facilities and that are introduced for the purpose of facilitating the transmission of crude oil or are otherwise introduced in the normal practice of crude oil production or related field operations. The Committee expects the Secretary to report back to Congress no later than twelve months after the date of enactment of the bill.

## SECTION-BY-SECTION ANALYSIS

### *Section 1—Short title and table of contents*

This section provides that the act made be cited as the Oil Pollution Prevention, Response, Liability and Compensation Act of 1989. It also includes the table of contents for the bill.

## TITLE I—OIL POLLUTION LIABILITY AND COMPENSATION

### *Section 101—Definitions*

This section contains the definitions of several words or phrases which appear throughout the Act.

### *Section 102—Liability*

This section provides that a responsible party for a vessel or a facility from which oil is discharged, or which poses a substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shoreline or the waters of the exclusive economic zone is jointly, severally, and strictly liable for the removal costs which arise out of or directly result from such incident and for the specified damages which are proximately caused by the incident. The Committee has included the traditional tort concept of proximate cause with regard to the determination of those damages for which recovery may be had.

Removal costs are those for removal actions taken by the United States, a State, or an Indian Tribe which are not inconsistent with the National Contingency Plan, and other actions taken by any other person which are consistent with the National Contingency Plan. The types of damages for which a responsible party is liable include natural resources damages, damages to real or personal property, loss of subsistence use, loss of revenues, and loss of profits and earning capacity.

Natural resources damages are for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss. These damages are recoverable by the appropriate trustee as provided in subsection (e).

Damages for injury to, or economic losses resulting from destruction of, real or personal property are recoverable by a claimant who owns or leases the property.

Damages for loss of subsistence use of natural resources are recoverable by any claimant who so uses the natural resources which have been injured, destroyed, or lost.

The government of the United States, a State, or a political subdivision thereof is entitled to recover damages equal to the net loss of taxes, royalties, rents, fees, or net profits shares for a period not to exceed two years, due to the injury, destruction, or loss of real property, personal property, or natural resources.

A person is also entitled to recover damages equal to the loss of profits or impairment of earning capacity, based on prior profits or earnings, due to the injury, destruction, or loss of real property, personal property, or natural resources. In order to recover such damages, the person must derive at least 25 percent of his or her earnings from the activities which utilize the property or natural resources, or, if such activities are seasonal in nature, 25 percent of his or her earnings during the applicable season.

The strict liability provisions of section 102 do not apply to any discharge which is authorized by a permit issued under Federal, state, or local law.

In the event that a responsible party for a vessel or facility can establish that a discharge and the resulting removal costs and damages were caused solely by an act of omission of one or more third parties (or solely by such an act or omission in combination with an act of God or an act of war) the third party is to be treated as the responsible party or parties for purposes of determining liability under the Act. If the third party to whom liability is transferred is the owner or operator of a vessel or facility, the third party is subject to the same liability limit that would apply to the vessel or facility. In other cases, the third party is liable to the extent that the responsible party of the vessel or facility from which the discharge actually occurred would have been liable.

Subsection (b) provides that a responsible party can establish a complete defense to liability if the incident resulted from an act of God, an act of war, hostilities, civil war, or insurrection; or, was solely caused by an act of omission of one or more persons other than a responsible party, an employee or agent of a responsible party, or one whose act or omission occurs in connection with a contractual relationship with a responsible party. This defense to liability does not apply if a responsible party fails or refuses to report an incident. Liability to a particular claimant can be denied when an incident is caused in whole or in part by the gross negligence or willful misconduct of the claimant, or to the extent that an incident is caused by the negligence of the claimant. The Committee emphasizes that the defenses specifically enumerated are intended to be the only defenses available to a responsible party and no other defenses are allowed to the strict, joint, and several liability which is established in the bill.

Subsection (c) establishes the liability limits for vessels and facilities. These limits are: $500 per gross ton or $5 million, whichever is greater, but not to exceed $150 million, for any tanker; $300 per gross ton or $500,000, whichever is greater, for any other vessel; or $75 million for any facility.

In determining liability, a tanker is defined as a vessel constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo, excluding a non-self-propelled vessel of less than 3,000 gross tons carrying oil in bulk as cargo and operating on the inland waterways system. These inland barges are assessed liability at the rate applicable to other vessels. These limitations do not apply if the incident was proximately caused by willful misconduct or gross negligence or a violation of applicable Federal safety, construction or operating regulations. The limitations also do not apply if the responsible party fails or refuses to report an incident and to provide all reasonable cooperation and assistance requested by a responsible official in connection with removal activities, or refuses without sufficient cause to comply with an administrative order issued under section 311(e) of the Federal Water Pollution Control Act.

The Secretary is authorized to reduce the liability limits for facilities other than offshore facilities which are not deepwater ports to less than $75 million, but not less than $8 million. The Secretary is also directed to undertake a study of the relative operational or environmental risks posed by the transportation of oil to deepwater ports versus the transportation of oil by vessel to other ports. If the study determines that the use of deepwater ports in connection with the transportation of oil results in a lower operational or environmental risk than the use of other ports, the Secretary is to initiate a rulemaking proceeding to lower the limits of liability with respect to vessels transferring oil to deepwater ports and with respect to such ports.

Subsection (d) provides that a responsible party is liable for interest on the amount paid in satisfaction of a claim for the period beginning on the 30th day following the date on which the claim is presented and ending on the date when the claimant is paid. The making of an offer to a claimant can stop the accural of interest if the offer is subsequently accepted. Interest is computed at the average of the highest rate for commercial and finance company paper of maturities of 180 days or less as published in the Federal Reserve Bulletin. The interest which accrues on a claim is not subject to the liability limitations which are contained in subsection (c)(1).

Subsection (e) establishes the methods of determining liabilities for losses of natural resources. Liability is to the United States for natural resources belonging to, managed by, controlled by, or appertaining to the United States, to a State for such resources of the State, and to an Indian Tribe for natural resources of such Indian Tribe, and to the government of a foreign country for natural resources of that country.

The President, the Governor, and the governing body of the Indian Tribe are each required to designate trustees to act on their behalf in determining the extent of damages to natural resources, developing and implementing a plan for the restoration, rehabilitation, or replacement or acquisition of the equivalent of the natural resources which were injured and which are under their respective trusteeship. Plans for the natural resources are to be developed and implemented only after adequate public notice and opportunity for hearing and consideration of all public comment. The Committee recognizes that in designating Federal trustees, the President may also choose to have EPA act as an advisor to the trustees and as a coordinator of long-term restoration efforts.

The measure of damages to natural resources is to be the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of the damaged natural resources. Added to this is to be the value of the lost public uses of the resources in the period beginning on the date the damage occurs and ending on either the date such resources are restored, rehabilitated, or replaced or the equivalent is acquired or the date on which it is determined that such resources cannot be restored, rehabilitated, or replaced or no equivalent can be acquired. The subject of natural resources damages assessment has recently been addressed in the cases of *Ohio* v. *U.S. Department of the Interior, et al,* No. 86-1529 (D.C. Cir. July 14, 1989) and *Colorado* v. *U.S. Department of the Interior, et al,* No. 87-1265 (D.C. Cir. July 14, 1989). The provision in the bill regarding loss of use of natural resources is not intended to affect the ruling of the Court in that case or to address the issue of how loss of use is to be evaluated.

The provision simply recognizes loss of use as a proper component of damages to natural resources. Because more than one of the trustees could exercise jurisdiction over a particular natural resource, the bill provides that there shall be no double recovery for natural resources damages.

Determinations or assessment of damages to natural resources, other than the value of the lost public use of the resource, shall have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding to enforce such an assessment. Funds recovered by a trustee for damages to natural resources are to be retained by the trustee to reimburse and pay costs incurred in the assessment of natural resource damages and developing and implementing a plan for the restoration, rehabilitation, or replacement or acquisition of the equivalent of the natural resources.

In the event that a responsible party causes damages to a natural resource which cannot be restored, rehabilitated, or replaced, or for which no equivalent can be acquired, that party is to be liable for a civil penalty not to exceed the greater of $1 million or one half of the responsible party's liability under this section. Any action to recover such a civil penalty is to be brought by the Attorney General on behalf of the trustee in a court of competent jurisdiction. In determining the penalty, the court is to consider the nature and extent of the damages to natural resources, the value of the natural resources, the degree of culpability of the person held liable for the discharge, and the nature and extent of efforts taken by that person to prevent or mitigate the damages, and restore the natural resources. The liability for a civil penalty is in addition to any other liability under the Act.

Subsection (f) allows foreign claimants to recover under the Act. A foreign claimant must first seek recovery under any applicable international agreement and, except for oil which originated from the Trans-Alaska Pipeline, the recovery must be authorized by a treaty or executive agreement between the United States and the claimant's country, or it must be determined that the claimant's country provides a comparable remedy for United States claimants.

Subsection (g) provides that the responsible party for a vessel or facility from which oil is discharged may assert a claim for removal costs or damages only if the responsible party is entitled to a defense to liability or is entitled to a limitation of liability. Such a claim may be made only to the extent that responsible party's liability has been exhausted.

Subsection (h) specifically allows for a right of contribution against any other potentially liable person.

Subsection (i) provides that no indemnification or other agreement shall be effective to transfer any liability imposed under section 102 to any other person. This does not operate to bar a cause of action for subrogation.

Subsection (j) provides that the Secretary is to consult with affected natural resources trustees on the appropriate removal action to be taken in connection with any discharge of oil. Removals are to be considered complete when so determined by the Secretary in consultation with the Governor or Governors of the affected State or States.

### *Section 103—Uses of the fund*

Subsection (a) provides that the Oil Spill Liability Trust Fund is available to the Secretary for the payment of removal costs, including the costs of monitoring removal actions; the costs incurred by the trustees in carrying out their functions for assessing damages to natural resources and for developing and implementing plans for the restoration, rehabilitation, replacement of damaged resources; the payment of obligations authorized by State officials; the payment of removal costs and damages resulting from a discharge of oil from foreign offshore units; the payment of personnel, equipment, and training costs associated with the maintenance of the strike forces authorized under section 311(c) of the Federal Water Pollution Control Act; the payment of administrative and personnel costs and expenses reasonably necessary for and incidental to the implementation and administration of the Act (which includes all aspects of implementing programs or studies authorized in the Act unless an alternative funding source is specifically stated); and, the payment of contributions to international funds which are the liability of the United States.

The fund is not liable for costs or damages to a claimant where the incident is caused by gross negligence or willful misconduct of the claimant or to the extent the costs or damages are caused by the negligence of the claimant.

The maximum amount which may be paid from the fund with respect to any one incident is $1 billion. The President may increase the maximum amount with respect to the incident if the President determines that such increase is necessary and in the best interest of the United States. This authority to increase the limit is not delegable to another Federal official.

Subsection (d) provides that the Secretary may authorize one or more Federal officials to obligate money in the fund, one of which shall be the Commandant of the Coast Guard. The Secretary is also authorized to delegate authority to obligate money in the fund to officials of a State with an adequate program operating under a cooperative agreement with the Federal government. In the delegation of authority to a State to obligate money from the fund, and in the issuance of regulations permitting States to draw money from the fund, the Secretary should take into account the extent of State and local government participation in the preparation and implementation of response plans under section 202 of the bill, and the provisions of those plans.

Subsection (e) allows for the direct draw by State officials against the fund of up to $250,000 for removal costs not inconsistent with the National Contingency Plan. This direct draw authority is in addition to that which could be delegated by the Secretary to the officials of a State under subsection (d). In the event the Governor uses this direct draw authority the Governor must notify the Secretary within 24 hours after any obligation of a payment from the fund.

To the extent that there is a claim paid out of the fund, the United States is subrogated to all rights of the claimant to recover from the responsible party. The section also requires the Comptroller General to provide an audit review team to audit all payments or other uses of fund and to be sure that it is being properly administered.

Subsection (h) provides that claims must be presented to the fund for removal costs within three years after the date of completion of all removal action and for damages within three years after the date on which the loss and its connection with the discharge in question were reasonably discoverable. A claimant may make a claim for natural resources damages three years following the date of natural resources damage assessment regulations if that date is later than otherwise provided. There can be no double payment out of the fund for the same costs of damages.

### *Section 104—Claims procedure*

Except as provided, the bill requires that claims for removal costs or damages are to be presented first to the responsible party or guarantor of the source of the spilled oil. The exceptions to this rule are: where the Secretary has advertised or otherwise notified claimants that they could claim directly against the fund; if the claim is by a responsible party; claims by the Governor of a State for removal costs; or, claims by a United States claimant when a foreign offshore unit has discharged oil causing damage.

If a claim is presented to a responsible party or guarantor and such party denies liability for the claim or the claim is not settled within 180 days, the claimant may elect to commence an action in court or may present the claim to the fund. This section also provides that to the extent a claim is presented to a responsible party or guarantor and full compensation is unavailable because of liability limits or financial incapability, a claim may be presented to the fund.

Regulations are to be issued to establish procedure for making claims against the fund.

### *Section 105—Designation, notification, and advertisement*

Subsection (a) requires the Secretary to designate the source or sources of a discharge after receiving notice of a spill. If the source is a vessel or a facility, the Secretary is to notify the responsible party and the guarantor, if known. Unless a responsible party or guarantor notifies the Secretary of its denial of the designation, the party must advertise the designation and the procedure by which claims may be presented to such party or guarantor. Failure to advertise can result in such advertisement being undertaken by the Secretary at the responsible party's expense. If the responsible party and guarantor deny a designation or the source of the pollution was a public vessel or the Secretary is unable to designate the source, the Secretary shall advertise to potential claimants the procedure by which claims may be presented to the fund.

### *Section 106—Subrogation*

This section provides that any person including the fund who pays compensation shall be subrogated to all rights, claims, and causes of action that the claimant had under the Act. Actions on behalf of the fund are to be commenced by the Attorney General.

### *Section 107—Financial responsibility*

This section establishes financial responsibility requirements for vessels and facilities. Evidence of financial responsibility must be established, in accordance with regulations issued by the Secretary, for vessels over 300 gross tons (except a non-self-propelled vessel that does not carry oil as cargo or fuel) using any port or place in the United States or the navigable waters, and vessels using the waters of the exclusive economic zone to transship or lighter oil destined for a port or place subject to the jurisdiction of the United States. The financial responsibility demonstrated must be sufficient to meet the maximum amount of liability to which the vessel would be subject under the provisions limiting vessel owners liability. If the responsible party owns or operates more than one vessel, evidence of financial responsibility is required only to meet the maximum liability applicable to the largest of such vessels. Failure to maintain such evidence will result in the Secretary withholding or revoking clearance to call at a U.S. port, and the Secretary may deny entry or detain any such vessel.

Offshore facilities must maintain financial responsibility sufficient to meet the maximum amount of liability to which the responsible party could be subject under the Act in a case where the responsible party is entitled to limit its liability.

Financial responsibility may be established by evidence of insurance, surety bond, guarantee, letter of credit, qualification as a self-insurer, or other evidence of financial responsibility satisfactory to the Secretary.

If liability is established under the Act, the claim may be asserted directly against any guarantor providing evidence of financial responsibility. Such a guarantor may invoke rights and defenses available to the responsible party as well as the defense that the incident was caused by the willful misconduct of the responsible party, but the guarantor may not invoke any other defense that might be available in proceedings brought by the responsible party against the guarantor. No guarantor shall be liability in excess of the amount of financial responsibility which the guarantor has provided.

Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements for financial responsibility shall be liable to the United States for a civil penalty not to exceed $25,000 per day of violation. In addition to the penalty, the Attorney General may secure such relief as necessary to compel compliance with this section, including a judicial order terminating operations.

This section also provides that regulations respecting financial responsibility which have been issued pursuant to any provision of law repealed or superseded by the Act shall remain in full force and effect unless and until new regulations are issued. The Secretary may issue a responsible party one certificate of financial responsibility for purposes of meeting the financial responsibility requirements of the oil spill liability legislation and any other law.

### *Section 108—Litigation, jurisdiction, and venue*

This section provides that review of any regulation under the Act may be had only in the Circuit Court of Appeals of the United States for the District of Columbia, and application must be made within 90 days of the date such regulations are promulgated. All other causes of action arising under this Act shall be the jurisdiction of the United States District Courts without regard to the citizenship of the parties or the amount in controversy. Venue shall be in the district in which the incident, injury, or damages occurred, or in which the defendant resides, may be found, has its principal office, or has appointed an agent for service of process. Nothing in the Act affects any action commenced before the date of enactment.

The general period of limitations for an action for damages is three years after the date on which the loss and the connection of the loss with the discharge in question were reasonably discoverable or, if later, and for damages to natural resources, the date on which regulations are issued for natural resource damage assessment. Actions for removal costs must be commenced within three years after completion of the removal action. Such an action may be commenced at any time after such costs have been incurred.

Actions for contribution must be commenced within three years after the date of judgment for recovery of costs or damages or the date of entry of a judicially approved settlement with respect to such costs or damages. An action for subrogation must be brought within three years after the date of the payment of the claim.

### *Section 109—Relationship to other law*

This section provides that except as provided in the Act, no action arising out of a discharge of oil, or a substantial threat of a discharge of oil, from a vessel or facility into or upon the navigable waters or adjoining shorelines or the waters of the exclusive economic zone (other than an action for personal injury or wrongful death), may be brought in any court of the United States or of any state or political subdivision thereof. The exception of personal injury or wrongful death includes the preservation of state worker's compensation laws. There is no intent to affect the rights or obligations established under worker's compensation statutes.

The section specifically preserves the authority of any state to establish or continue in effect an oil spill fund or account or to require any person to contribute to that fund or account. However, if the State fund or account is supported by contributions levied upon persons who contribute to the fund established by section 9509 of the Internal Revenue Code of 1986, the State fund or account may not be used to compensate any person for damages under this Act.

This section also specifically provides that nothing affects the authority of the United States or any State or political subdivision thereof to impose, or to determne the amount of, any fine or penalty for any violation of law relating to an incident.

This section also provides that a responsible party who establishes and maintains evidence of financial responsibility in accordance with the Act is not to be required under any State or local law, rule, or regulation to establish or maintain any other evidence of financial responsibility with respect to discharges of oil. A State is given the authority to enforce, on the navigable waters of the State, the requirements for evidence of financial responsibility imposed under the Act.

This section further provides that the Act of March 3, 1851, shall not apply to removal costs which arise out of or directly result from, and damages which are proximately caused by, an incident involving the discharge or substantial threat of discharge of oil. That Act could have the effect if it were to apply of reducing a vessel owner's liability below those levels which are provided in this Act.

### *Section 110—Regulations*

This section provides that the Secretary shall issue such regulations as may be necessary to carry out this title.

### *Section 111—Effective date*

This section provides that title I is to apply with respect to an incident occurring after the date of the enactment of the Act. However, payments from the fund may not be made before the commencement date for the collection of taxes for deposit into the fund (as such term is defined in section 4611(f)(2) of the Internal Revenue Code of 1986).

## TITLE II—PREVENTION AND RESPONSE

### *Section 201—Authority to direct responses*

This section provides that in the event of a discharge of oil or the substantial threat of discharge of oil into or upon navigable waters or adjoining shorelines or the waters of the exclusive economic zone, the Secretary or the Administrator of the Environmental Protection Agency, as determined by the President, shall assume the direction of all Federal, state, and private activities regarding the containment, cleanup, removal, and other responses to the discharge or threat of discharge. This section is intended to resolve questions concerning the authority of the Secretary or the Administrator to take charge of the response activities following the discharge or threat of discharge of oil. The Secretary or the Administrator has clear authority to assume the direction of all cleanup activities. The extent of the direction of cleanup efforts by the Secretary or the Administrator will depend on the circumstances of the spill, including its size, potential for causing damages, and the types of actions which are necessary to respond to the spill. For example, in the case of smaller spills, which do not present difficult cleanup problems, the immediate physical presence of Federal officials may not be required in order to adequately direct the cleanup activities.

This section also provides that the assumption of such direction of activities does not affect the assessment of liability under the Act or the authority of the President under section 311(c)(1) of the Federal Water Pollution Control Act relating to the removal of discharged oil. The Committee emphasizes that a responsible party's liability attaches at the time of the incident and the liability continues during cleanup activities, including activities at the direction of the Secretary or the Administrator. Defenses available to a responsible party are limited to those specifically enumerated in the bill. This section also is not intended to affect any duty upon a spiller of oil to respond to a spill in the first instance and to minimize damages from the spill.

### *Section 202—Response plans*

This section requires the Secretary or the Administrator of EPA, as appropriate to designate those areas for which plans for responding to discharges and threatened discharges of oil are required to be prepared, the persons who are required to prepare such plans, and the persons who are required to pay for the preparation of the plans. The designation is to be made within 180 days, and is to be made in consultation with concerned state officials

The criteria for determining the areas are as follows: the likelihood of a discharge or threatened discharge of oil; the likelihood of significant adverse effects resulting from discharges or threatened discharges; the amount and type of oil handled, stored, or processed; the presence of natural resources in the area which are likely to be damaged by a discharge of oil and the value, uniqueness, and susceptibility of such resources to damage; and, the geographic, topographic, weather, and other conditions which might influence frequency, severity, and effects of oil discharges and responses thereto.

Once an area has been designated, the persons designated to prepare the plan must do so and submit in writing, to the Secretary or the Administrator, as appropriate, for approval a plan for responding to discharges and threatened discharges of oil in the area. These plans must be reviewed on a periodic basis. Each plan is to include a description of the general area in which response actions will be required, responsibilities of responsible parties, governments, and others in responding to discharges, and other matters as the Secretary or the Administrator may require. Concerned States and local governments are to be consulted in the preparation of the plans because they are familiar with the area and situation covered by the plan. The Secretary or the Administrator may provide technical assistance in the preparation of a response plan.

The purpose of the section is to provide broad flexibility in the formulation of plans to respond to potential oil spills in various areas of the country which, because of the factors mentioned in the section, lend themselves to response plans involving more than just the vessel or facility from which a spill or the threat of a spill emanates. One example would be an area in which a port or ports and unloading and loading facilities are located in the same general vicinity and would be in a position to respond to a spill from a vessel or facility in that area. The plan could include cooperative agreements for assistance on a reciprocal or reimbursable basis, the sharing of expenses for the shortage and maintenance in the area of response equipment, the training of personnel for response activities, and the like. State and local governments should also be participants in the plans. Whether or not existing contingency plans need to be changed will depend on the circumstances of each case. Plans relating to vessels and facilities may lend themselves to incorporation in new plans or may need to be only supplemented by new plans. The determining factor will be what is necessary to achieve a plan which makes the best use of resources which can be brought to bear on a spill or threat of a spill. The section provides the President with the authority and responsibility to evaluate the adequacy of existing plans and to take whatever steps are determined necessary to improve response capabilities.

The Committee recognizes that there is in place a system for reviewing local hazardous materials contingency plans at the State level by State Emergency Response Commissions (SERCs). These plans are prepared by Local Emergency Planning Committees (LEPCs) and are not limited just to hazardous chemicals, but can address oil and petroleum products. This system was established under the Emergency Planning and Community Right-to-Know Act of 1986. Any review/approval process specifically for oil spill contingency plans should be closely coordinated with the SERC/LEPC organization.

Expenses which are incurred by the Secretary or the Administrator in carrying out this section are to be paid for out of the fund.

### *Section 203—Review and revision of response capability*

This section requires the Secretary or the Administrator of EPA to conduct an evaluation of the status and effectiveness of personnel and equipment responding to discharges of oil or threats of discharges of oil not later than six months after the date of enactment. The evaluation is to determine, on a regional basis, whether existing personnel and equipment are sufficient for responding to a discharge in an effective and timely manner in the general regions of Alaska, the Pacific Northwest, California, the Gulf of Mexico, the Great Lakes, the North Atlantic, the South Atlantic, Hawaii, and inland waters of the United States. A report on the findings and respective evaluations is to be submitted within one year of enactment.

This section also requires that within one year of enactment the Secretary or the Administrator of EPA, as appropriate, is to revise the national contingency plan to require oil response personnel to be subjected to training approved by the Secretary or the Administrator and periodic drills, without prior notice, to demonstrate the continued effectiveness and readiness of oil response teams.

This section further requires that within six months after the submission of the report by the Secretary or the Administrator of EPA, they shall issue regulations requiring inspection of equipment for responding to discharges of oil and the threats of discharges of oil. Certification of the equipment must be made not less than once every three years to ensure that the equipment is maintained in working condition.

This section also requires that within six months of the report evaluating response personnel and equipment, the Secretary or the Administrator of EPA, as appropriate, must issue regulations requiring owners and operators of vessels and facilities to take such action as may be necessary to ensure that sufficient personnel and equipment are available, on a regional and collective basis, for responding to discharges of oil and threats of discharges of oil. If the owners and operators of vessels and facilities do not take all action required by the Secretary or the Administrator, the Secretary or the Administrator must take such action as is necessary to ensure the presence of sufficient personnel and equipment.

All expenses incurred by the Secretary and the Administrator of EPA in carrying out this section are to be paid from the fund.

### *Section 204—Computer listing of emergency response resources and availability of agency data*

Section 204 requires the National Response Center, within one year after the date of enactment and in consultation with State officials, to establish, maintain, and annually revise a comprehensive nationwide computer listing of emergency response resources which are available to and are appropriate for use in responding to discharges and substantial threats of discharges of oil. This listing is to include a continually updated description of all government and private emergency response resources, a nationwide listing of persons having emergency response resources available for sale or lease, and a listing of the names, telephone numbers, and areas of expertise of persons who are experts in responding to discharges or threats of discharges of oil and their effects. The National Response Center is to provide continuous access to the information contained in the listing to response teams, on-scene coordinators, and all State and local government officials responsible for directing response to discharges and substantial threats of discharges of oil.

The head of each Federal agency having a representative on the National Response Team is to ensure the ready accessibility to all relevant data in the possession of each agency, other than classified data, regarding the geographic, oceanographic, hydrologic, natural resource, and meteorological characteristics of the navigable waters or adjoining shorelines and the waters of the exclusive economic zone for which the National Contingency Plan is applicable.

Finally, this section requires the President to take such actions as may be necessary to encourage appropriate international organizations to establish an international inventory of emergency response resources. The March 24, 1989 spill in Alaska demonstrated that international cooperation may be necessary in responding to very large spills.

### *Section 205—Vessel traffic systems*

This section requires the Secretary to make a survey of areas of navigable waters to determine the need for new, expanded, or improved vessel traffic systems. Based on the results of the survey, the Secretary is to establish, in order of priority, those areas of navigable waters which are in need of new, expanded, or improved vessel traffic systems. Factors to be included in the determination of priority include the nature, volume, and frequency of vessel traffic in the area and the risks of collisions, spills, and damages associated with such traffic which could be reduced or eliminated by installation, expansion, or improvement of a vessel traffic system. The priority list is to be submitted to Congress within one year after enactment.

The Secretary is authorized to acquire, install, and operate such equipment in vessel traffic systems as necessary for making improvements and expansions contained on the priority list. The Secretary is also authorized to make participation in vessel traffic systems operated by the Secretary mandatory for such vessels as the Secretary deems appropriate.

To finance the additional cost of these vessel traffic systems, the Secretary is directed to establish and collect from users of the vessel traffic systems such fees as the Secretary determines are necessary. The fees must be established in accordance with section 9701 of title 31 of the United States Code, which requires fees to accurately reflect costs to the government. These fees collected by the Secretary are to be credited and available to the Secretary, without fiscal year limitation. This section shall not be construed as altering or expanding the duties and liabilities of the United States for the performance or functions of services for which fees are collected, and the collection of the fees does not constitute an express or implied undertaking by the United States government to perform any service or activity in a certain manner.

This section also requires the Secretary to conduct a study of whether the Secretary should be given additional authority to direct the movement of vessels upon navigable waters and whether such authority should be exercised, and to submit to Congress a report of the results of the study within one year of enactment.

The Committee does not intend this section to supersede the vessel traffic systems provisions contained in the Coast Guard Authorization bill for fiscal year 1990 and the Dire Supplemental Appropriations Bill for fiscal year 1989. This section is a supplement to those provisions.

### *Section 206—Navigational aids*

This section requires the Secretary to conduct a study to determine areas in which navigation risks are sufficient to require tug escorts of tankers or other navigation aids to improve the safe movement of tankers. The Secretary is to report to the Congress in one year and is authorized to issue such regulations as may be necessary to implement the recommendations contained in the report.

### *Section 207—Periodic gauging of plating thickness or commercial vessels*

This section requires the Secretary to issue regulations, within one year of enactment, establishing minimum standards for the plating thickness of vessels transporting oil in bulk or commercial quantities, and requiring periodic gauging of the plating thickness of all vessels over thirty years old which are used to transport such oil.

The Committee notes the U.S. Coast Guard has not been able to inspect every vessel that enters certain harbors. In particular, the Committee notes that in New York Harbor, the Coast Guard was only able to inspect 58 percent of the foreign tank vessels entering the Harbor in one year recently. Yet of those vessels that were inspected, the Coast Guard found that 5 percent had safety or other defects that constituted a violation or received a letter of warning. It is the Committee's desire that the Coast Guard report to the Congress about its ability to conduct inspections in harbors where it deems such inspections are appropriate, what resources the Coast Guard would need to conduct those inspections and the oil spill prevention and emergency response benefits such inspections would yield.

### *Section 208—Overfill and tank level or pressure monitoring devices*

This section requires the Secretary, within one year of enactment, to issue regulations establishing minimum standards for devices for warning persons of overfills and tank levels of oil and cargo tanks and devices for monitoring the pressure of oil cargo tanks. Within one year of enactment the Secretary is to issue regulations establishing requirements concerning the use of overfill devices and tank level or pressure monitoring devices.

### *Section 209—Tanker personnel*

This section requires the Secretary, within one year of enactment, to conduct a study to determine appropriate crew sizes for tankers and qualifications of personnel on such tankers. The Secretary is to report the findings to Congress together with recommendations for implementing the results of the study.

### *Section 210—Use of liners*

This section requires the Administrator of EPA to conduct a study to determine whether liners should be used as a secondary means of containment at onshore facilities used for the bulk storage of oil and located near navigable waters to prevent leaching of oil into the ground and to aid in leak detection. The administrator is to report on the study within one year of enactment and is authorized to issue such regulations as may be necessary to implement the recommendations contained in the report.

### *Section 211—Modifications to dredges*

This section requires the Secretary of the Army to conduct a study to determine the feasibility of making dredges usable in responding to a discharge of oil or threats of discharges of oil. A report to Congress is to be submitted within one year of the date of enactment. During the Alaska oil spill cleanup, the Army Corps of Engineers provided two dredges to assist in oil recovery operations. The Committee believes that there is a need for the Corps to explore the possibility of dredge modifications on a wider scale in order to facilitate future recovery operations.

### *Section 212—Tanker free zones*

This section requires the Secretary to conduct a study of whether to designate areas of the navigable waters and exclusive economic zone as zones where the movement of tankers should be prohibited or limited. If the Secretary determines that such zones should be designated, the Secretary is to study which areas to designate and what limitation should be placed on tanker traffic. Factors to be considered include existing navigational risk based on geography, weather, and volume of traffic; the potential for danger to natural resources; and, availability of alternative methods for transporting oil, such as deepwater port facilities. The report required under this section is to be submitted within one year of enactment.

### *Section 213—Superiority of Federal pilot's licenses*

This section requires the Secretary to conduct a study to determine whether licenses issued by the Secretary authorizing persons to serve as pilots of commercial vessels should be legally superior to licenses issued by the States for such purposes, and to report to Congress within one year of the date of enactment on the results of the study. This section is not intended to encourage a decrease in licensing requirements or to reduce licensing qualifications to any type of a lowest common denominator.

### *Section 214—Research and development*

This section requires the President to establish a program for conducting oil pollution research and development and to designate appropriate Federal agencies to participate in such a program.

The general purposes of the program include (1) development of new or improve methods to contain discharges of oil from vessels or facilities; (2) development of new or improved methods for oil recovery, cleanup, and disposal which are effective and protect the environment; and (3) development of effective models to predict the effects of discharges of oil and the fate of such oil, including the development of baseline data necessary for determining such effects; (4) development of technologies and methods to protect public health and safety from discharges of oil; (5) development of new or improve methods to ensure the health and safety of response personnel; (6) development of adequate worker training standards for oil discharge response personnel; (7) development of new or improved methods to restore and rehabilitate natural resources damaged by discharges of oil; and, (8) determination of long-term effects of discharges of oil on fish and wildlife.

The program specifically requires the President to direct the Secretary to conduct research on changes in vessel design and construction criteria (such as tank size, vessel size, double hulls, and ballast sides) for the purpose of reducing the likelihood of discharges of oil, and to direct the Secretary and the Administrator of EPA to conduct a joint research and development program for improving technology to prevent discharges of oil and to minimize the size of such discharges. Such a program would include technologies for measuring the ullage of a vessel, preventing discharges from tank vents, preventing discharges during lightering and bunkering operations, and containing discharges on the deck of a vessel.

The Committee believes that research and development efforts with regard to oil spill technology development could be located at research centers which are uniquely located and qualified to conduct research in the various climates and marine environments that exist in various parts of the country.

In designating the Federal agencies participating in this program, the President should consider the program and capabilities of the Army Corps of Engineers. As demonstrated in the Alaska oil spill cleanup and as detailed in Committee hearings, The Corps has considerable expertise in a number of research areas related to oil spills and in the development of procedures to assess and remedy their impacts. For example, the Corps has experience in remote sensing and data management that would be useful in locating and tracking oil spills, oil spill motion and dispersion modeling, and habitat restoration.

The President if required to submit annual reports to Congress on the research and development program and there are authorized to be appropriated from the fund $10 million for each of fiscal years 1991 and 1992, $7.5 million for fiscal year 1993, and $5 million for each of fiscal years 1994 and 1995.

### *Section 215—Consideration of alcohol abuse*

Subsection (a) amends chapter 71 of title 46 of the United States Code by adding a new section 7115 to prohibit the Secretary from issuing or renewing a license or certificate of registry for an individual who the Secretary determines is a current or chronic abuser of alcohol or fails to make available to the Secretary certain driving record information. The driving record information which is required to be available is that which would be available in accordance with section 206(b)(4) of the National Driver Registry Act of 1982. This section also authorizes the Secretary to conduct such investigations as are necessary to determine if an individual is a current or chronic abuser of alcohol, if the Secretary receives reliable information that an applicant has been found guilty of an alcohol-related infraction resulting in suspension or revocation of a motor vehicle operator license.

This section also amends section 7302 of title 46 of the United States Code prohibiting the Secretary from issuing or renewing a merchant mariners document for an individual who the Secretary determines is a chronic or current abuser of alcohol or who fails to make available driving record information from the National Driver Register. The Secretary is also authorized to make investigations of the individual as for renewing licenses and certificates of registry. The Secretary is also given authority to determine the period of validity of the merchant mariners document.

Section 7703 of title 46 of the United States Code is amended to permit the Secretary to suspend or revoke a license, certificate of registry, or merchant mariner's document of an individual if the Secretary determines the individual is a current or chronic abuser of alcohol or the individual fails to make available driving record information from the National Driver Registry. The Secretary is authorized to conduct investigations to determine the validity of information on the current or chronic abuse of alcohol. Such a suspension may not be terminated until the individual provides sufficient proof that the individual is no longer a current or chronic abuser of alcohol.

This section also amends section 8101 of title 46, the United States Code, to provide that if the chief mate or equivalent and the next senior crew member on board a vessel determine that reasonable cause exists to believe that the master or individual in command is intoxicated as the result of the use of dangerous drugs or alcohol and is therefore incapable of commanding the vessel, the chief mate shall temporarily relieve the master and temporarily assume command of the vessel and shall immediately enter the details in the vessel log and report such details to the Secretary by the most expeditions means available. The chief mate is also required to report the circumstances in writing to the Secretary within twelve hours after the vessel arrives at its destination.

### *Section 216—Access to national driver register*

This section amends the National Driver Register Act of 1982 to provide that any individual who has applied for or received a license or certificate of registry or a merchant mariner's document or has applied for a renewal of such license, certificate, or document, may request the chief driver licensing official of a state to transfer information regarding the individual to the Secretary. The Secretary may receive such information and shall, prior to using such information, make it available to the individual for review and written comment. Information received by the Secretary may not otherwise be used or divulged.

## TITLE III—IMPLEMENTATION OF INTERNATIONAL CONVENTIONS

### *Section 301—Definitions*

This section contains the definitions for specific terms used in title III so that they will have the same meaning as under the International Conventions which would be implemented by this title.

### *Section 302—Applicability of Conventions*

This section provides that in any case in which the International Convention of Civil Liability for Oil Pollution Damage, 1984, and the International Convention on the Establishment of the International Fund for Compensation for Oil Pollution Damage, 1984, are in effect with respect to the United States, liability relating to pollution damage arising from an incident involving a ship shall be determined in accordance with those two conventions. Ratification of those conventions is currently awaiting action in the United States Senate.

### *Section 303—Recognition of international fund*

This section recognizes the International Oil Pollution Compensation Fund under the laws of the United States as a legal person and the director of the fund is recognized as its legal representative. The Secretary of State is deemed to have been appointed for the service of process in any legal proceedings involving the International Fund within the United States. The fund and its assets are exempt from all direct taxation and payment of customs duties in the United States.

### *Section 304—Action in U.S. courts*

This section provides that in an action against the owner of a ship or its guarantor under the Civil Liability Convention, the party to the litigation shall serve a copy of the complaint in a subsequent pleading upon the International Fund at the same time the complaint or other pleading is served upon the opposing parties. The International Fund may intervene as a matter of right in any action brought in a court in the United States against the owner of a ship or its guarantor under the Civil Liability Convention.

### *Section 305—Contribution to international fund*

This section provides that the amount of any contribution to the International Fund which is required to be made under article 10 of the Fund Convention (which outlines contribution requirements for countries which are parties to the fund) by any person with respect to oil received in any port, terminal installation, or other installation located in the United States is to be paid to the International Fund from the Trust Fund established by section 9509 of the Internal Revenue Code of 1986. This section also authorizes the Secretary to require persons required to make contributions under the international agreement to provide all information relating to that oil as may be necessary to determine the appropriate contribution and to fulfill U.S. obligations under the conventions.

### *Section 306—Recognition of foreign judgments*

This section provides that a final judgment of a court of any country which is a party to the Civil Liability Convention or to the Fund Convention in an action for compensation under either convention shall be recognized by any court of the United States having jurisdiction under this act, when that judgment has become enforceable in that country and is no longer subject to ordinary forms of review except where the judgment was obtained by fraud or the defendant was not given reasonable notice and a fair opportunity to present its case.

### *Section 307—Financial Responsibility*

This section provides that the owner of a ship documented under the laws of the United States and subject to the Civil Liability Convention is to establish and maintain evidence of financial responsibility as required in article VII of the Civil Liability Convention. These financial responsibility requirements also extend to the owners of a ship which enters or leaves a port or terminal of the United States or uses an Outer Continental Shelf facility or an offshore facility that is or was licensed under the Deep Water Port Act of 1974. Any ship carrying only oil as cargo, fuel, or residue, which has on board a valid certificate issued in accordance with article VII of the Civil Liability Convention shall be considered as having met the requirements of section 107.

The Secretary is authorized to issue any certificate of financial responsibility which the United States may issue under the Civil Liability Convention, and the Secretary must withhold or revoke the clearance required by section 4197 of the Revised Statutes of any ship which does not have a certificate demonstrating compliance with this section. The Secretary is authorized to deny entry to any facility or to any port or place in the United States any ship which does not produce the necessary certificate demonstrating compliance. Any person who fails to comply with the financial responsibility requirements or fails to provide information necessary to comply with the requirements for contribution to the International Fund, or fails to comply with any regulation issue under this title shall be liable to the United States for a civil penalty, not to exceed $25,000 per day of violation.

This section also provides that the United States waives all defenses based on sovereign immunity with respect to any controversy arising under the Civil Liability Convention or the Fund Convention relating to any ship owned by the United States and used for commercial purposes.

### *Section 308—Regulations*

This section authorizes the Secretary to issue such regulations as may be necessary to carry out this title and all obligations of the United States under the International Convention on Civil Liability for Oil Pollution Damage, 1984, and the Fund Convention.

## TITLE IV—MISCELLANEOUS PROVISIONS

### *Section 401—Trans-Alaska pipeline fund*

This section amends the liability provisions of the Trans-Alaska Pipeline Authorization Act to reflect that oil spilled into or upon the navigable waters of the United States will be covered by the provisions of the new Oil Pollution, Prevention, Response, Liability, and Compensation Act of 1989. The section restricts the coverage of the Trans-Alaska Pipeline Authorization Act liability provisions to spills in the state of Alaska for spills occurring from the pipeline. It also repeals the liability provisions for spilling of oil into the navigable waters in order to conform with the new liability provisions in the bill. The Trans-Alaska Pipeline Liability Fund is retained for the payment of claims which arise prior to the date of enactment of this Act.

The Trans-Alaska Pipeline Authorization Act established liability for damages from activities along or in the vicinity of the Alaskan pipeline right-of-way and for discharges of oil from vessels loaded at terminals of the Trans-Alaska pipeline. For a discharge from a vessel, strict liability for all claims arising out of any one incident can not exceed $100 million. The owner and operator of the vessel are liable for the first $14 million of allowed claims and the Trans-Alaska Pipeline Liability Fund, which is established by the act, is liable for the remaining claims. The Trans-Alaska Pipeline Fund is financed by a fee of fives cents per barrel of oil collected at the time the oil is loaded onto a vessel. As provided in the Act, the collection of the fee ceased when $100 million had been accumulated in the Fund. No claims have been paid from the Fund and the current balance is approximately $248 million.

There are proposals to rebate the Fund to those entities which have contributed to the Fund and also to deposit the Trans-Alaska Fund into the new oil spill Fund both with and without a credit for previous contributions to the Trans-Alaska Fund. The issue has been raised whether transferring the Trans-Alaska Fund to the new Fund could constitute a taking without just compensation in violation of the Fifth Amendment. This issue has not been resolved. The question of ownership of the Trans-Alaska Fund arises because the Fund, although created in statute, is administered by a government chartered non-profit corporation. There is also a question of whether a credit could satisfy Fifth Amendment requirements if the Trans-Alaska Fund were transferred to the new Fund and the contributors given a credit against tax payments into the Fund.

### *Section 402—Intervention of the High Seas Act*

This section amends section 17 of the Intervention on the High Seas Act to provide that the Oil Spill Liability Trust Fund is to be available to the Secretary for oil spill response actions taken pursuant to that Act.

### *Section 403—Federal Water Pollution Control Act*

This section amends section 311 of the Federal Water Pollution Control Act, the section relating to oil spill response, to require the designation, establishment, and maintenance of a strike force consisting of at least four teams of strike force personnel. It also amends the section to provide specific authority to safeguard against oil spills and to conduct research and development into methods and techniques to improve existing technology for responding to oil spills.

The authority of the President to assure abatement of actual or threatened discharges of oil is amended to authorize the issuance of such administrative orders as may be necessary to protect the public health and welfare. This is in addition to existing authority of the Attorney General to secure such relief as may be necessary to abate the threat.

Failure without sufficient cause to comply with an administrative order may result in the Attorney General bringing an action to enforce the order and to assess civil penalties of not more than $25,000 a day for each violation, and to assess three times the removal costs or damages incurred by the fund as a result of the failure to comply.

Authority to enforce these new provisions is in the United States district courts. This section also contains several other amendments to the Federal Water Pollution Control Act which are conforming in nature reflecting the enactment of the new oil spill liability law.

Finally, the penalties in section 311 are changed to provide that the penalty for failure to report an oil spill can be punished by a fine in accordance with the applicable provision of title 18 of the United States Code or imprisonment of not more than three years, or five years in the case of a subsequent second conviction, and to increase the penalty for a discharge of oil from $5,000 for each offense to $25,000 for each day of the offense.

### *Section 404—Deepwater Port Act*

This section contains conforming amendments to the Deepwater Port Act of 1974 to conform with the new requirements contained in this Act. The amounts remaining in the Deepwater Port Liability Fund are transferred to the new Oil Spill Liability Trust Fund and all remaining liabilities are assumed by the new fund.

### *Section 405—Outer Continental Shelf Lands Act Amendments of 1978*

The section repeals title III of the Outer Continental Shelf Lands Act Amendments of 1978. It also provides that amounts remaining in the Offshore Oil Pollution Compensation Fund are to be deposited into the new Oil Spill Liability Trust Fund and such fund is to assume all liability incurred by the Offshore Oil Pollution Compensation Fund.

### *Section 406—Qualified authorizing legislation*

This section provides that this Act is to be considered as qualified authorizing legislation for purposes of section 4611(f)(2)(B) of the Internal Revenue Code of 1986 so that taxes on crude oil which will constitute the Oil Spill Liability Trust Fund can begin to be collected.

### *Section 407—Effective date*

This section provides that sections 401, 402, 403 (other than subsection (j)), 404, and 405 are to be effective on the commencement date (as such term is defined in section 4611(f)(2) of the Internal Revenue Code of 1986) that is the date on which taxes are begun to be collected to finance the new Oil Spill Liability Trust Fund.

## COMPLIANCE WITH CLAUSE 2(l) OF RULE XI OF THE RULES OF THE HOUSE OF REPRESENTATIVES

(1) With reference to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Subcommittee on Investigations and Oversight did hold hearings on National Oil Spill Contingency Planning and Response Capabilities on May 10, 1989, but findings or recommendations have not been made. The Subcommittee on

Water Resources did hold a hearing on June 28, 1989, on the subject matter of this legislation.

(2) With reference to clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, H.R. 1465, as reported, does not provide new budget authority or increase tax expenditures, accordingly, a statement pursuant to section 308(a) of the Congressional Budget Act is not required.

(3) With reference to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee has received the report on H.R. 1465 prepared by the Congressional Budget Office under section 403 of the Congressional Budget Act. The Report is as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, September 14, 1989.*

Hon. GLENN M. ANDERSON,
*Chairman, Committee on Public Works and Transportation,*
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 1465, the Oil Pollution Prevention, Response, Liability and Compensation Act of 1989.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER,
*Director.*

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 1465.
2. Bill title: Oil Pollution Prevention, Response, Liability and Compensation Act of 1989.
3. Bill status: As amended and ordered reported by the House Committee on Public Works and Transportation on August 3, 1989.
4. Bill purpose: H.R. 1465 would consolidate federal oil pollution response activities into one entity, the Oil Spill Liability Trust Fund (OSLTF), which would provide for the cleanup, restoration of natural resources and compensation of economic loss from oil spills that threaten U.S. resources or occur on or near U.S. navigable waters. Monies in the OSLTF would also be available for administrative, operating and oversight expenses, including start-up and ongoing costs incurred by the U.S. Coast Guard (USCG) and other federal agencies to implement titles II and IV of this bill. Annual contributions to the International Fund (should the International Fund Convention be ratified by the United States) would also be paid from the OSLTF.

Title II of the bill would provide for enhancements and revisions in federal and private emergency preparedness efforts. The bill would require the USCG to implement the title's requirements through the promulgation of regulations and the completion of several studies. In addition, the title would require the President to establish an oil pollution research and development program. For this purpose, the bill would authorize appropriations from the

OSLTF of $10 million for each of fiscal years 1991 and 1992, $7.5 million for 1993, and $5 million a year for 1994 and 1995.

Under Title IV, the four existing oil pollution funds and compensation program would be terminated approximately 30 days after enactment of this bill. As of that date, unexpected balances in the U.S. Coast Guard's Pollution Fund (known as the "311k fund") would be transferred to the general fund of the U.S. Treasury, while expended balances of the Deepwater Port Liability (DWPF) and Offshore Oil Compensation (OOCF) funds would be credited to the OSLTF.

5. Estimated cost to the Federal Government: The OSLTF was created by Public Law 99-509, the Omnibus Reconciliation Act of 1986, which also contained amendments to the Internal Revenue Code (concerning related taxes) that would have taken effect only if suitable authorizing legislation had been enacted by September 1, 1987. The Technical and Miscellaneous Revenue Act of 1988 extended this deadline to December 31, 1990. As stated in Section 406 of the bill, H.R. 1465 is such authorizing legislation, and its enactment would therefore trigger the imposition of a 1.3 cent per-barrel tax on all crude oil received by U.S. refineries and on imported petroleum producers. Consequently, the budgetary impact of H.R. 1465 includes both revenue and spending effects, as shown in the following table.

[By fiscal year, in millions of dollars]

| | 1990 | 1991 | 1992 | 1993 | 1994 |
|---|---|---|---|---|---|
| Estimated Revenue Effects: | | | | | |
| Tax of 1.3 cents per barrel of oil— | | | | | |
| Revenue gain credited to the trust fund | 16 | 36 | 13 | | |
| Revenue gain, net of income and payroll tax offsets | 12 | 27 | 10 | | |
| Estimated Spending Effects: | | | | | |
| Estimated authorization level | 30 | 31 | 32 | 30 | 28 |
| Estimated outlays | 25 | 25 | 30 | 31 | 30 |
| Net Increase or Decrease (−) in the Deficit[1] | 13 | −2 | 20 | 31 | 30 |

[1] Outlays less net revenue gain.

The above table does not include federal outlays that may result, in the event of an oil spill, from the new coverage for third-party economic losses, because there is no basis for projecting such costs.

The costs of this bill fall within budget functions 300 and 400.

Basis of estimate: According to the provisions of Public Law 99-509, the creation of the OSLTF and the 1.3 cent-per barrel tax would become effective on the first day of the first calendar month beginning more than 30 days after enactment of such legislation (referred to as the "commencement date"). For the purposes of this estimate, CBO has assumed that H.R. 1465 will be enacted by the end of October, 1989, resulting in a commencement date for the OSLTF financing tax and expenditures from the OSLFT of December 1, 1989. As of this date, the estimated balance in the OSLTF (consisting of amounts transferred from the DWPF and OOCF) would be about $155 million. These transfers to the new fund and the transfer of 311k fund balances to the general fund would be intragovernmental transactions having no net impact on the federal budget.

Revenue effects. The revenue estimates shown in the above table were prepared by the Joint Committee on Taxation (JCT). As shown in the first line of the table, the tax of 1.3 cents per barrel of oil would yield an estimated $65 million in revenues for the trust fund over the 1990–1992 period. These amounts included estimated credits that taxpayers may take against the OSLTF financing tax for amounts paid before January 1987 into the OOCF and the DWPF (plus interest on these funds). The net revenue gain to the government, including income and payroll tax offsets, is estimated to be $49 million over three years (as shown in the second line of the table). The OSLTF financing tax would be in effect from the assumed commencement date of December 1, 1989 through December 31, 1991. The tax would expire sooner if cumulative tax collections credited to the trust fund exceed $300 million. The JCT estimates that collections credited to the trust fund between December 1, 1989 and December 31, 1991 would be about $65 million.

Spending effects. The authorization level and outlays shown in the table reflect additional operating and administrative costs that would be incurred as a result of this bill's enactment, assuming appropriation of the necessary sums. These include nonrecurring start-up costs as well as additional ongoing expenses associated with the administration of a greatly expanded compensation system and the maintenance of two additional response teams under the National Contingency Plan. Also included are interim costs associated with the revision of liability regulations and financial responsibility certificates. Research and development costs have been included at the authorized level ($37.5 million over the 1991–1995 period).

Variable cleanup and oversight costs under the new bill are expected to be similar to those now incurred by the Coast Guard. Such costs are difficult to estimate because significant oil spills are rare and unpredictable. While thousands of spills may occur in any year, their total costs, including claims, would most often not be high enough to exceed the bill's specified liability limits.

At present, the vast majority of spills under the jurisdiction of the Coast Guard are cleaned up by the responsible party and require only federal oversight. For example, no spills occurring at offshore production or port facilities have required any federal expenditure at all. About 90 percent of oil spills that fall under the jurisdiction of the Federal Water Pollution Control Act (which created the 311k fund) are cleaned up by the responsible party and require only Coast Guard oversight activities at the spill site to be funded by the federal government. Federal cleanup and oversight expenditures under H.R. 1465 would be about the same as under current law. In absence of any large spills, such costs would be expected to approximate the baseline level of about $7 million annually (at 1989 price levels), of which about half would be recovered from responsible parties within two years of the spill. Because such spending would not represent any net increase in federal outlays, no amounts have been included in this estimate.

H.R. 1465 also would permit claims for third-party economic losses to be paid from the fund when responsible parties cannot be located or do not pay or when claims exceed liability limits. Outlays for such damages are impossible to estimate because they depend on a number of unpredictable factors such as the number and size of spills as well as the particular circumstances surrounding each incident (for example, the proximity to land or fishing grounds). Even if it were possible to assess the probability of spill occurrence near high-risk areas, it would be impossible to predict the behavior of responsible parties or claimants, which is likely to be the most important determinant of claim costs.

If catastrophic spills occur, payments from the fund would be capped at $1 billion per incident. However, because claims against the OSLTF would be subject to the availability of funds, actual federal outlays probably would be much less. Under the provisions of Public Law 99–499, federal liability is limited at all times to the OSLTF balance, which may be augmented by up to a total of $500 million in repayble advances from the Treasury. Assuming that the fund is used for all of the purposes authorized in Section 103, CBO estimates that less than $150 million would be available in the OSLTF at any time to finance a major spill. Therefore, even with advances at the maximum authorized level, total fund expenditures for a major spill could not exceed $650 million. Given the financing levels provided in Public Law 99–499, the fund would be unable to repay advances of any significant amount.

Finally, H.R. 1465 would provide that, if and when the International Convention on Civil Liability for Oil Pollution Damage, 1984, and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage conventions are ratified by the United States, annual contributions to the International Fund due from U.S. interests would be paid from the OSLTF. Annual contributions would depend on actual spill experience and cannot be estimated precisely. However, based on past USCG analyses, CBO estimates that the U.S. annual contribution would be about $10 million a year by 1993, if the International Convention is ratified by that time.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: On September 12, 1989, the Congressional Budget Office transmitted a cost estimate for H.R. 3027, the Oil Pollution Prevention, Response, Liability and Compensation Act of 1989, as ordered reported by the House Committee on Public Works and Transportation on August 3, 1989. The CBO cost estimate for H.R. 1465 is identical to that estimate for H.R. 3027.

9. Estimate prepared by: Deborah Reis and Eric Nicholson.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

(4) With reference to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee does not have oversight findings and recommendations from the Committee on Government Operations on H.R. 1465.

## COST OF LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires a statement of the estimated costs of the United

States which would be incurred in carrying out H.R. 1465 as reported, in fiscal year 1989, and each of the following five years. However, under paragraph (d) of Clause VII, its provisions do not apply when the Committee has received a timely report from the Congressional Budget Office.

## COMMITTEE ACTION AND VOTE

The Committee, in compliance with rule XI(2)(l)(2)(A) of the Rules of the House of Representatives, reports favorably the bill, H.R. 1465, as amended. The Committee ordered the bill reported by voice vote.

# ADDITIONAL VIEWS OF HON. DOUGLAS APPLEGATE

The passage of a strong oil spill liability is vital if we hope to protect our natural resources and guarantee the safe transportation of oil products. I believe that the premise of this legislation will achieve these goals. I am pleased that this Committee has worked diligently to produce a piece of legislation which will provide greater assurances that shipments of oil products are moved on our waters in the safest methods available. The Committee's bill addresses almost every possible concern, including the structure of the vessels, the training of the personnel, the establishment of a trust fund, and increase penalties for violators. While I strongly endorse this bill, I do believe that without alterations in the tax code, the penalties and intent of the legislation may be lost.

Currently, when an oil company is involved in the spilling of oil into our nation's water, the structure of our tax code actually rewards them for the cost of clean-up and environmental restoration. This is the case in any accident, be it the result of negligence or an act of God. Oil Companies may incur costs for economic harm or environmental damage, but, these costs are then written off as a cost of doing business and their overall tax liability is reduced. As a result, the American taxpayer must foot the bill for the loss of natural resources and for the overall cost of clean-up. This is simply an outrage.

I have introduced legislation that would prohibit oil companies from including the cost of any clean-up into the cost of doing business. The costs of a clean-up should be paid by the company and the stockholders, not the American taxpayer. Perhaps if our tax structure was revised, and the cost of clean-up no longer reduced their tax liability companies would be more diligent in guaranteeing the safe transportation and storage of oil products. If the legislation that I have introduced was enacted oil companies would be put on notice that all fines, clean-up costs and economic compensation, for acts of negligence, would come from their profits and dividends, not the American tax payer. I urge the Ways & Means Committee to seriously review this current policy of forcing the American tax payer to pay for the mistakes of large oil companies. Any effective oil spill liability legislation must include revisions in our tax structure.

DOUGLAS APPLEGATE.

# ADDITIONAL VIEWS OF HON. BENJAMIN L. CARDIN TO H.R. 1465

I am a strong supporter of the oil spill liability, compensation, prevention, and response legislation crafted by the Public Works and Transportation Committee. The Committee's leadership deserves special commendation for taking a comprehensive approach to the problems so sadly highlighted by the disastrous spill in Alaska this spring. In one significant area, however, I believe the Committee's action will interfere with the opportunity for efficient and comprehensive responses to similar tragedies in the future.

Following discussions with a wide range of interested parties prior to the Committee's mark-up, I was prepared to offer an amendment, based on the Administration's proposal to Congress, that would have eliminated the unnecessary preemption of states' rights from the bill. This is a contentious issue that has not been taken up by the Public Works and Transportation Committee in years. Indeed, it has blocked passage of comprehensive federal oil spill legislation for at least fourteen years.

My proposal would allow for application of state liability laws and establishment of oil spill funds for purposes states deem necessary. After watching the inept early response of the oil industry and federal government to the disastrous spill in Alaska, how can we now turn over all responsibilities for future spills to the same industry and federal agencies while denying state officials the full right to respond? The Clean Water Act does not preempt; Superfund does not preempt; and federal oil pollution laws—including those governing the OCS, the Trans-Alaskan pipeline, and deepwater ports—do not preempt; what is the unique justification in this case?

There is no overriding public need to deny states and local communities, fishermen, beachfront property owners, and water dependent businesses the right to provide for their own protection; the right to establish higher standards; the right to account for local priorities and needs. Connecticut, Florida, Maine, Maryland, New Hampshire, New Jersey, New York, North Carolina, Texas, Virginia, and Washington all have substantial funds in place. There is no overriding public need to curtail their efforts. My language has the support of virtually every coastal state government, and environmental and fishing groups. In fact, on August 1, 1989, in Chicago, the National Governors Association went even further—opposing any preemption whatsoever, even that necessary to implement international oil pollution protocols.

I am concerned that the legislation the committee has reported to the House does not adequately address these crucial issues. I did not offer my amendment on this issue, in order to permit the bill to progress toward floor action. My action was based upon a commitment of committee support for the opportunity to offer my amendments on the floor when the bill is considered by the Rules Committee. I look forward to that opportunity on the floor and the support of many of my committee colleagues.

BEN CARDIN.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

# TITLE 46, UNITED STATES CODE

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## Subtitle II—Vessels and Seamen

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## PART E—MERCHANT SEAMEN LICENSES, CERTIFICATES, AND DOCUMENTS

### CHAPTER 71—LICENSES AND CERTIFICATES OF REGISTRY

7107. Issuing and classifying licenses and certificates of registry.

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*7115. Consideration of alcohol abuse in issuing and renewing licenses and certificates of registry.*

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## PART E—MERCHANT SEAMEN LICENSES, CERTIFICATES, AND DOCUMENTS

### CHAPTER 71—LICENSES AND CERTIFICATES OF REGISTRY

Sec.
7101. Issuing and classifying licenses and certificates of registry.

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*7115. Consideration of alcohol abuse in issuing and renewing licenses and certificates of registry.*

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### § 7107. Duration of certificates of registry

[A certificate of registry issued under this part is not limited in duration.] *The Secretary shall determine the term of validity of a certificate of registry. Such a certificate may be renewed under regulations issued by the Secretary.* However, the validity of a certificate issued to a medical doctor or professional nurse is conditioned on the continuous possession by the holder of a license as a medical doctor or registered nurse, respectively, issued by a State.

* * * * * * *

### *§ 7115. Consideration of alcohol abuse in issuing and renewing licenses and certificates of registry*

*(a) Limitation on Issuance of Licenses and Certificates.—The Secretary may not issue or renew a license or certificate of registry under this chapter for any individual who—*

*(1) the Secretary determines is a current or chronic abuser of alcohol; or*

*(2) fails to make available to the Secretary the information referred to in subsection (b).*

*(b) DRIVING RECORD INFORMATION.—The Secretary shall require each individual applying for issuance or renewal of a license or certificate of registry under this chapter to make available to the Secretary, in accordance with section 206(b)(4) of the National Driver Register Act of 1982 (23 U.S.C. 401 note), all information contained in the National Driver Register regarding the motor vehicle driving record of such individual.*

*(c) INVESTIGATIONS.—Upon receiving reliable information that an individual applying for issuance or renewal of a license or certificate of registry under this chapter has been found guilty of alcohol-related infraction resulting in suspension or revocation of a motor vehicle operator license issued to the individual, the Secretary may conduct such investigation as are necessary to determine if the individual is a current or chronic abuser of alcohol.*

## CHAPTER 73—MERCHANT MARINERS' DOCUMENTS

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### § 7302. Issuing merchant mariners' documents and continuous discharge books

(a) * * *

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*(c) LIMITATION ON ISSUANCE OF DOCUMENTS.—The Secretary may not issue or renew a merchant mariner's document under this chapter for any individual who—*

*(1) the Secretary determines is a current or chronic abuser of alcohol; or*

*(2) fails to make available to the Secretaary the information referred to in subsection (d).*

*(d) DRIVING RECORD INFORMATION.—The Secretary may require each individual applying for issuance or renewal of a merchant mariner's document under this chapter to make available to the Secretary, in accordance with section 206(b)(4) of the National Driver Register Act of 1982 (23 U.S.C. 401 note), all information contained in the National Driver Register regarding the motor vehicle driving record of such individual.*

*(e) INVESTIGATIONS.—Upon receiving reliable information that an individual applying for issuance or renewal of a merchant mariner's document under this chapter has been found guilty of an alco-*

*hol-related infraction resulting in suspension or revocation of a motor vehicle operator license issued to the individual, the Secretary may conduct such investigations are necessary to determine if the individual is a current or chronic abuser of alcohol.*

*(f) Period of Validity.—The Secretary shall determine the term of validity of a merchant mariner's document. Such documents may be renewed under regulation issued by the Secretary.*

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## CHAPTER 77—SUSPENSION AND REVOCATION

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### §§ 7703. Bases for suspension or revocation

*(a)* A license, certificate of registry, or merchant mariner's document issued by the Secretary may be suspended or revoked if, when acting under the authority of that license, certificate, or document the holder—

(1) has violated or failed to comply with this subtitle, a regulation prescribed under this subtitle, or any other law or regulation intended to promote marine safety or to protect navigable waters.

(2) has committed an act or incompetence, misconduct, or negligence.

*(b) Suspensions for Alcohol Abuse.—*

*(1) In general.—The Secretary may suspend or revoke a license, certificate of registry, or merchant mariner's document issued by the Secretary to an individual if—*

*(A) the Secretary determines the individual is a current or chronic abuser of alcohol; or*

*(B) the individual fails to make available to the Secretary the information referred to in paragraph (3).*

*Any determination of the Secretary to suspend or revoke the license, certificate of registry, or merchant mariner's document of an individual under this paragraph shall be based on the severity of abuse of alcohol by the individual and the length of time necessary to control that abuse.*

*(2) Investigations.—The Secretary may conduct such investigations as are necessary to determine if an individual who holds a license, certificate of registry, or merchant mariner's document issued by the Secretary is a current or chronic abuser of alcohol if the Secretary receives reliable information—*

*(A) regarding any alcohol-related misconduct of the individual; or*

*(B) pursuant to paragraph (3) that the individual has been found guilty of an alcohol-related infraction resulting in suspension or revocation of a motor vehicle operator license issued to the individual.*

*(3) Driving record information.—The Secretary may request an individual who holds a license, certificate of registry, or merchant mariner's document issued by the Secretary to make available to the Secretary, in accordance with section 206(b)(4) of the National Driver Register Act of 1982 (23 U.S.C. 401 note), all information contained in the National Driver*

*Register regarding the motor vehicle driving record of such individual.*

*(4) Limitation on suspension terminations.—The Secretary may not terminate a suspension of a license, certificate of registry, or merchant mariner's document of an individual under paragraph (1)(A) until the individual provides sufficient proof that the individual is no longer a current or chronic abuser of alcohol.*

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# PART F—MANNING OF VESSELS

## CHAPTER 81—GENERAL

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### § 8101. Complement of inspected vessels

(a) * * *

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*(i) Relief of Master.—If the chief mate or equivalent and the next senior crewmember on board a vessel determine that reasonable cause exists to believe that the master or individual in command is intoxicated as a result of the use of dangerous drugs (as defined in section 7704) or alcohol and is therefore incapable of commanding the vessel, the chief mate shall temporarily relieve the master and temporarily assume command of the vessel and shall immediately enter the details in the vessel log and report such details to the Secretary by the most expeditious means available. The chief mate shall also report the circumstances in writing to the Secretary within 12 hours after the vessel arrives at its destination.*

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## The National Driver Register Act of 1982

## TITLE II—NATIONAL DRIVER REGISTER

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### ACCESSIBILITY OF REGISTER INFORMATION

Sec. 206. (a)(1) * * *

(b)(1) The Chairman of the National Transportation Safety Board and the Administrator of the Federal Highway Administration, for purposes of requesting information regarding any individual who is the subject of any accident investigation conducted by the Board or Bureau of Motor Carrier Safety, may request the chief driver licensing official of a State to obtain information under subsection (a) of this section regarding such individual. The Chairman and Administrator may receive any such information.

(2) Any individual who is employed as a driver of a motor vehicle or who seeks employment as a driver of a motor vehicle may request the chief driver licensing official of the State in which the individual is employed or seeks employment to transmit informa-

tion under subsection (a) of this section to his employer or prospective employer. An employer or prospective employer may receive such information regarding any such individual, and shall make that information available to the affected individual. There shall be no access to information in the Register under this paragraph if such information was entered in the Register more than three years before the date of such request.

(3) Any individual who has applied for or received an airman's certificate may request the chief driver licensing official of a State to transmit information regarding the individual under subsection (a) of this section to the Administrator of the Federal Aviation Administration. The Administrator of the Federal Aviation Administration may receive such information and shall make such information available to the individual for review and written comment. The Administrator shall not otherwise divulge or use such information, except to verify information required to be reported to the Administrator by an airman applying for an airman medical certificate and to evaluate whether the airman meets the minimum standards as prescribed by the Administrator to be issued an airman medical certificate. There shall be no access to information in the Register under this paragraph if such information was entered in the Register more than 3 years before the date of such request, unless such information relates to revocations or suspensions which are still in effect on the date of the request. Information submitted to the Register by States under the Act of July 14, 1960 (74 Stat. 526), or under this Act shall be subject to access for the purpose of this paragraph during the transition to the Register established under section 203(a) of this Act.

**[**(5)**]** *(4)* Any individual who is employed by a railroad as an operator of a locomotive, or who seeks employment with a railroad as an operator of a locomotive, may request the chief driver licensing official of a State to transmit information regarding the individual under subsection (a) of this section to his or her employer or prospective employer, or to the Secretary. There shall be no access to information in the Register under this paragraph which was entered in the Register more than three years before the date of such request, unless such information relates to revocations or suspensions that are still in effect on the date of the request. Information submitted to the Register by the States under Public Law 86-660 (74 Stat. 526) or under this title shall be subject to access for the purpose of this paragraph during the transition described under section 203(c) of this title.

*(5) SEAMAN CERTIFICATES.—Any individual who has applied for or received a license or certificate of registry in accordance with section 7101 of title 46, United States Code, or a merchant mariner's document in accordance with section 7302 of title 46, United States Code, or has applied for a renewal of such license, certificate of registry, or document, may request the chief driver licensing official of a State to transmit information regarding the individual under subsection (a) to the Secretary. The Secretary may receive such information and shall, prior to using such information in any adverse action regarding the individual's license, certificate of registry, or document, make such information available to the individual for review and written comment. The Secretary may not other-*

wise divulge or use such information, except in accordance with section 7115, 7302, or 7703 of title 46, United States Code. There shall be no access to information in the Register under this paragraph if such information was entered in the Register more than 5 years before the date of such request, unless such information relates to revocations or suspensions which are still in effect on the date of the request. Information submitted to the Register by States under the Act of July 14, 1960 (74 Stat. 526), or under this Act shall be subject to access for the purpose of this paragraph during the transition to the Register established under section 203(a) of this Act.

**[**(4)**]** *(6)* Any individual, in order (A) to determine whether the Register is providing any data regarding him or the accuracy of any such data; or (B) to obtain a certified copy of data provided through the Register regarding him, may request the chief driver licensing official of a State to obtain information regarding him under subsection (a) of this section.

**[**(5)**]** *(7)* Any request made under this subsection shall be made in such form, and according to such procedures, as the Secretary shall establish by regulation.

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### CRIMINAL PENALTIES

SEC. 208. (a) Any person, other than an individual described in section 206(b)**[**(5)**]***(6)* of this title, who receives under section 206 of this title information specified in section 205(b) (1) or (3) of this title (the disclosure of which is not authorized by section 206 of this title), and who, knowing that disclosure of such information is not authorized, willfully discloses such information, shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(b) Any person who knowingly and willfully requests or under false pretenses obtains information specified in section 205(b) (1) or (3) of this title from any person who receives such information under section 206 of this title shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

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## SECTION 204 OF THE TRANS-ALASKA PIPELINE AUTHORIZATION ACT

### LIABILITY

SEC. 204. (a) * * *

(b) If any area *in the State of Alaska* within or without the right-of-way or permit area granted under this title is polluted by any activities *related to the trans-Alaska oil pipeline* conducted by or on behalf of the holder to whom such right-of-way or permit was granted, and such pollution damages or threatens to damage acquatic life, wildlife, or public or private property, the control and total removal of the pollutant shall be at the expense of such holder, including any administrative and other costs incurred by the Secretary or any other Federal officer or agency. Upon failure of such holder to adequately control and remove such polutant, the Secretary, in cooperation with other Federal, State, or local agencies, or in cooperation with such holder, or both, shall have the right to accomplish the control and removal at the expense of such holder. *This subsection shall not apply to removal costs covered by the Oil Pollution Prevention, Response, Liability, and Compensation Act of 1989.*

[(c)(1) Notwithstanding the provisions of any other law, if oil that has been transported through the trans-Alaska pipeline is loaded on a vessel at the terminal facilities of the pipeline, the owner and operator of the vessel (jointly and severally) and the Trans-Alaska Pipeline Liability Fund established by this subsection, shall be strictly liable without regard to fault in accordance with the provisions of this subsection for all damages, including clean-up costs, sustained by any person or entity, public or private, including residents of Canada, as the result of discharges of oil from such vessel.

[(2) Strict liability shall not be imposed under this subsection if the owner or operator of the vessel, or the Fund, can prove that the damages were caused by an act of war or by the negligence of the United States or other governmental agency. Strict liabilty shall not be imposed under this subsection with respect to the claim of a damaged party if the owner or operator of the vessel, or the Fund, can prove that the damage was caused by the negligence of such party.

[(3) Strict liability for all claims arising out of any one incident shall not exceed $100,000,000. The owner and operator of the vessel shall be jointly and severally liable for the first $14,000,000 of such claims that are allowed. Financial responsibility for $14,000,000 shall be demonstrated in accordance with the provisions of section 311(p) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321(p)) before the oil is loaded. The Fund shall be liable for the balance of the claims that are allowed up to $100,000,000. If the total claims allowed exceed $100,000,000 they shall be reduced proportionately. The unpaid portion of any claim may be asserted and adjudicated under other applicable Federal or state law.

[(4) The Trans-Alaska Pipeline Liability Fund is hereby established as a non-profit corporate entity that may sue and be sued in its own name. The Fund shall be administered by the holders of the trans-Alaska pipeline right-of-way under regulations prescribed by the Secretary. The Fund shall be subject to an annual audit by the Comptroller General, and a copy of the audit shall be submitted to the Congress.

[(5) The operator of the pipeline shall collect from the owner of the oil at the time it is loaded on the vessel a fee of five cents per barrel. The collection shall cease when $100,000,000 has been accumulated in the Fund, and it shall be resumed when the accumulation in the Fund falls below $100,000,000.

[(6) The collections under paragraph (5) shall be delivered to the Fund. Costs of administration shall be paid from the money paid to the Fund, and all sums not needed for administration and the satisfaction of claims shall be invested prudently in income-producing securities approved by the Secretary. Income from such securities shall be added to the principal of the Fund.

[(7) The provisions of this subsection shall apply only to vessels engaged in transportation between the terminal facilities of the pipeline and ports under the jurisdiction of the United States. Strict liability under this subsection shall cease when the oil has first been brought ashore at a port under the jurisdiction of the United States.

[(8) In any case where liability without regard to fault is imposed pursuant to this subsection and the damages involved were caused by the unseaworthiness of the vessel or by negligence, the owner and operator of the vessel, and the Fund, as the case may be, shall be subrogated under applicable State and Federal laws to the rights under said laws of any person entitled to recovery hereunder. If any subrogee brings an action based on unseaworthiness of the vessel or negligence of its owner or operator, it may recover from any affilate of the owner or operator, if the respective owner or operator fails to satisfy any claim by the subrogee allowed under this paragraph.

[(9) This subsection shall not be interpreted to preempt the field of strict liability or to preclude any State from imposing additional requirements.

[(10) If the Fund is unable to satisfy a claim asserted and finally determined under this subsection, the Fund may borrow the money needed to satisfy the claim from any commercial credit source, at the lowest available rate of interest, subject to approval of the Secretary.

[(11) For purposes of this subsection only, the term "affiliate" includes—

[(A) Any person owned or effectively controlled by the vessel owner or operator; or

[(B) Any person that effectively controls or has the power effectively to control the vessel owner or operator by—

[(i) stock interest, or

[(ii) representation on a board of directors or similar body, or

[(iii) contract or other agreement with other stockholders, or

[(iv) otherwise; or

[(C) Any person which is under common ownership or control with the vessel owner or operator.

[(12) The term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a business trust, or an unincorporated organization.]

## SECTION 17 OF THE INTERVENTION ON THE HIGH SEAS ACT

[SEC. 17. The revolving fund established under section 311(k) of the Federal Water Pollution Control Act shall be available to the Secretary for Federal actions and activities under section 5 of this Act.]

***SEC. 17. AVAILABILITY OF OIL SPILL LIABILITY TRUST FUND.***

*The Oil Spill Liability Trust Fund shall be available to the Secretary for actions taken under sections 5 and 7 of this Act.*

## SECTION 311 OF THE FEDERAL WATER POLLUTION CONTROL ACT

### OIL AND HAZARDOUS SUBSTANCE LIABILITY

SEC. 311.(a) * * *
(b)(1) * * *

* * * * * * *

(5) Any person in charge of a vessel or an onshore facility or an offshore facility shall, as soon as he has knowledge of any discharge of oil or a hazardous substance from such vessel or facility in violation of paragraph (3) of this subsection, immediately notify the appropriate agency of the United States Government of such discharge. *The Federal agency shall immediately notify the appropriate State agency of any State which is, or may reasonably be expected to be, affected by the discharge of oil or a hazardous substance.* Any such person (A) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, or (B) in charge of a vessel for which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) of this subsection and who is otherwise subject to the jurisdiction of the United States at the time of the discharge, or (C) in charge of an onshore facility or an offshore facility, who fails to notify immediately such agency of such discharge shall, upon conviction, be **[**fined not more than $10,000, or imprisoned for not more than one year, or both**]** *fined in accordance with the applicable provisions of title 18 of the United States Code, or imprisoned for not more than 3 years (or no more than 5 years in the case of a second or subsequent conviction, or both.* Notification received pursuant to this paragraph or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(6)(A) Any owner, operator, or person in charge of any onshore facility or offshore facility from which oil or a hazardous substance is discharged in violation of paragraph (3) of this subsection shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than **[**$5,000 for each offense**]** *$25,000 for each day of such offense.* Any owner, operator, or person in charge of any vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, and any owner, operator, or person in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) who is otherwise subject to the jurisdiction of the United States at the time of the discharge, shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than **[**$5,000 for each offense**]** *$25,000 for each day of such offense.* No penalty shall be assessed unless the owner or operator charged shall have been given notice and opportunity for a hearings on such charge. Each violation is a separate offense. Any such civil penalty may be compromised by such Secretary. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the owner or operator charged, the effect on the owner or operator's ability to continue in business, and the gravity of the violation, shall be considered by such Secretary. The Secretary of the Treasury shall withhold at the request of such Secretary the clearance required by section 4197 of the Revised Statutes of the United States, as amended (46 U.S.C. 91), of any vessel the owner or operator of which is subject to the foregoing penalty. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to such Secretary.

* * * * * * *

(c)(1) * * *

(2) Within sixty days after the effective date of this section, the President shall prepare and publish a National Contingency Plan for removal of oil and hazardous substances, pursuant to this subsection. Such National Contingency Plan shall provide for efficient, coordinated, and effective action to minimize damage from oil and hazardous substance discharges, including containment, dispersal, and removal of oil and hazardous substances, and shall include, but not be limited to—

(A) * * *

* * * * * * *

(C) **[**establishment or designation of a strike force consisting**]** *designation, establishment, and maintenance of a strike force consisting of at least 4 teams* of personnel who shall be trained, prepared, and available to provide necessary services to carry out the Plan, including the establishment of major ports, to be determined by the President, of emergency task forces of trained personnel, adequate oil and hazardous substance pollution control equipment and material, and a detailed oil and hazardous substance pollution prevention and removal plan;

(D) a system of surveillance and notice designed to *safeguard against as well as* insure earliest possible notice of discharges of oil and hazardous substances and imminent threats of such discharges to the appropriate State and Federal agencies;

* * * * * * *

(F) procedures and techniques to be employed in identifying, containing, dispersing, and removing oil and hazardous substances *as well as research and development into methods and techniques to improve existing technology*;

* * * * * * *

(H) a system whereby the State or States affected by a discharge of oil or hazardous substance may act where necessary to remove such discharge and such State or States may be **[**be reimbursed from the fund established under subsection (k) of this section for the reasonable costs incurred in such removal.**]** *reimbursed, in the case of any discharges of oil from a vessel or facility, for the reasonable costs incurred for such removal, from the Oil Spill Liability Trust Fund.*

* * * * * * *

(d) Whenever a marine disaster in or upon the navigable waters of the United States has created a substantial threat of a pollution hazard to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and the public and private shorelines and beaches of the United States, because of a discharge, or an imminent discharge, of large quantities of oil, or of a hazardous substance from a vessel the United States may (A) coordinate and direct all public and private efforts directed at the removal or elimination of such threat; and (B) summarily remove, and, if necessary, destroy such vessel by whatever means are available without regard to any provisions of law governing the employment of personnel or the expenditure of appropriated funds. **[**Any expense incurred under this subsection or under the Intervention on the High Seas Act (or the convention defined in section 2(3) thereof) shall be a cost incurred by the United States Government for the purposes of subsection (f) in the removal of oil or hazardous substance.

**[**(e) In addition to any other action taken by a State or local government, when the President determines there is an imminent and substantial threat to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and public and private property, shorelines, and beaches within the United States, because of an actual or threatened discharge of oil or hazardous substance into or upon the navigable waters of the United States from an onshore or offshore facility, the President may require the United States attorney of the district in which the threat occurs to secure such relief as may be necessary to abate such threat, and the district courts of the United States shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.**]**

*(e) ABATEMENT ACTIONS.—*

*(1) PRESIDENT'S AUTHORITY.—In addition to any action taken by a State or local government, when the President determines that there may be an imminent and substantial threat to the public health or welfare of the United States, including fish, shellfish, and wildlife and public and private property, shorelines, and beaches under the jurisdiction or control of the United States, because of an actual or threatened discharge of oil or a hazardous substance from a vessel or facility in violation of subsection (b) of this section, the President may—*

*(A) require the Attorney General to secure such relief as may be necessary to abate such threat; or*

*(B) after notice to the affected State, take such other action under this section, including issuing such administrative orders, as may be necessary to protect the public health and welfare.*

*(2) ENFORCEMENT OF ORDERS.—If any person fails without sufficient cause to comply with an order under paragraph (1)(B), the President may request the Attorney General to bring an action in the appropriate district court of the United States to enforce such an order, to assess civil penalties of not more than $25,000 a day for each violation, and to assess 3 times the removal costs or damages incurred by the Oil Spill Liability Trust Fund as a result of the failure to comply.*

*(3) DISTRICT COURT JURISDICTION.—The district courts of the United States shall have jurisdiction to grant such relief under*

*this subsection as the public interest and the equities of the case may require.*

* * * * * * *

[(i)(1) In any case where an owner or operator of a vessel or an onshore facility or an offshore facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section acts to remove such oil or substance in accordance with regulations promulgated pursuant to this section, such owner or operator shall be entitled to recover the reasonable costs incurred in such removal upon establishing, in a suit which may be brought against the United States Government in the United States Claims Court, that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether such act or omission was or was not negligent, or of any combination of the foregoing clauses.

[(2) The provisions of this subsection shall not apply in any case where liability is established pursuant to the Outer Continental Shelf Lands Act, or the Deepwater Porter Act of 1974.

[(3) Any amount paid in accordance with a judgment of the United States Claims Court pursuant to this section shall be paid from the funds established pursuant to subsection (k).]

* * * * * * *

[(k)(1) There is hereby authorized to be appropriated to a revolving fund to be established in the Treasury such sums as may be necessary to maintain such fund at a level of $35,000,000 to carry out the provisions of subsection (c), (d), (i), and (l) of this section. Any other funds received by the United States under this section shall also be deposited in said fund for such purposes. All sums appropriated to or deposited in, said fund shall remain available until expended.

[(2) The Secretary of Transportation shall notify the Congress whenever the unobligated balance of the fund is less than $12,000,000, and shall include in such notification a recommendation for a supplemental appropriation relating to the sums that are needed to maintain the fund at the level provided in paragraph (1)]

(l) The President is authorized to delegate the administration of this section to the heads of those Federal departments, agencies, and instrumentalities which he determines to be appropriate. [Any moneys in the fund established by subsection (k) of this section shall be available to such Federal departments, agencies, and instrumentalists to carry out the provisions of subsections (c) and (i) of this section.] Each such department, agency, and instrumentality, in order to avoid duplication of effort, shall, whenever appropriate, utilize the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities.

* * * * * * *

[(p)(1) Any vessel over three hundred gross tons, including any barge of equivalent size, but not including any barge that is not self-propelled and that does not carry oil or hazardous substances as cargo or fuel, using any port or place in the United States or the navigable waters of the United States for any purpose shall establish and maintain under regulations to be prescribed from time to time by the President, evidence of financial responsibility of, in the case of an inland oil barge $125 per gross ton of such barge, or $125,000, whichever is greater, and in the case of any other vessel, $150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, $250,000), whichever is greater, to meet the liability to the United States which such vessel could be subjected under this section. In cases where an owner or operator owns, operates, or charters more than one such vessel, financial responsibility need only be established to meet the maximum liability to which the largest of such vessels could be subjected. Financial responsibility may be established by any one of, or a combination of, the following methods acceptable to the President: (A) evidence of insurance, (B) surety bonds, (C) qualification as a self-insurer, or (D) other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States.

[(2) The provisions of paragraph (1) of this subsection shall be effective April 3, 1971, with respect to oil and one year after the date of enactment of this section with respect to hazardous substances. The President shall delegate the responsibility to carry out the provisions of this subsection to the appropriate agency within sixty days after the date of enactment of this section. Regulations necessary to implement this subsection shall be issued within six months after the date of enactment of this section.

[(3) Any claim for costs incurred by such vessel may be brought directly against the insurer or any other person providing evidence of financial responsibility as required under this subsection. In the case of any action pursuant to this subsection such insurer or other person shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if an action had been brought against him by the claimant and which would have been available to him if an action had been brought against him by the owner or operator.

[(4) Any owner or operator of a vessel subject to this subsection, who fails to comply with the provisions of this subsection or any regulation issued thereunder, shall be subject to a fine of not more than $10,000.

[(5) The Secretary of the Treasury may refuse the clearance required by section 4197 of the Revised Statutes of the United States, as amended (4 U.S.C. 91), to any vessel subject to this subsection, which does not have evidence furnished by the President that the financial responsibility provisions (1) of this subsection have been complied with.

[(6) The Secretary of the Department in which the Coast Guard is operated may (A) deny entry to any port or place in the United States or the navigable waters of the United States, to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection, which upon request, does not produce evidence furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.]

* * * * * * *

*(s) AVAILABILITY OF OIL SPILL LIABILITY TRUST FUND.—The Oil Spill Liability Trust Fund shall be available to carry out subsection (c), (d), (i), and, (l). Any amounts received by the United States under this section shall be deposited in the Oil Spill Liability Trust Fund.*

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## DEEPWATER PORT ACT OF 1974

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### LICENSE FOR THE OWNERSHIP, CONSTRUCTION, AND OPERATION OF A DEEPWATER PORT

SEC. 4. (a) * * *

* * * * * * *

(c) The Secretary may issue a license in accordance with the provisions of this Act if—

(1) he determines that the applicant is financially responsible and will meet the requirements of [section 18(1) of this Act;] *section 107 of the Oil Pollution Prevention, Response, Liability, and Compensation Act of 1989;*

* * * * * * *

### LIABILITY

SEC 18. (a) * * *

[(b) Any individual in charge of a vessel or a deepwater port shall notify the Secretary as soon as he has knowledge of a discharge of oil. Any such individual who fails to notify the Secretary immediately of such discharge shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than 1 year, or both. Notification received pursuant to this subsection, or information obtained by the use of such notification, shall not be used against any such individual in any criminal case, except a prosecution for perjury or for giving a false statement.]

[(c)] *(b)* (1) Whenever any oil is discharged from a vessel within any safety zone, from a vessel which has received oil from another vessel at a deepwater port, or from a deepwater port, the Secretary shall remove or arrange for the removal of such oil as soon as possible, unless he determines such removal will be done properly and expeditiously by the licensee of the deepwater port or the owner or operator of the vessel from which the discharge occurs.

(2) Removal of oil and actions to minimize damage from oil discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan for removal of oil and hazardous substances established pursuant to section 311(c)(2) of the Federal Water Pollution Control Act, as amended.

(3) Whenever the Secretary acts to remove a discharge of oil pursuant to this subection, he is authorized to draw upon money available in the [Deepwater Port Liability Fund established pursuant to subsection (f) of this section] *Oil Spill Liability Trust Fund.*

Such money shall be used to pay promptly for all cleanup costs incurred by the Secretary in removing or in minimizing damage caused by such oil discharge.

[(d) Notwithstanding any other provision of law, except as provided in subsection (g) of this section, the owner and operator of a vessel shall be jointly and severally liable, without regard to fault, for cleanup costs and for damages that result from a discharge of oil from such vessel within any safety zone, or from a vessel which has received oil from another vessel at a deepwater port while located in the safety zone, except when such vessel is moored at a deepwater port. Such liability shall not exceed $150 per gross ton or $20,000,000, whichever is lesser, except that if it can be shown that such discharge was the result of gross negligence or willful misconduct within the privity and knowledge of the owner or operator, such owner and operator shall be jointly and severally liable for the full amount of all cleanup costs and damages.

[(e) Notwithstanding any other provision of law, except as provided in subsection (g) of this section, the licensee of a deepwater port shall be liable, without regard to fault, for cleanup costs and damages that result from a discharge of oil from such deepwater port or from a vessel moored at such deepwater port. Such liability shall not exceed $50,000,000 except that if it can be shown that such damage was the result of gross negligence or willful misconduct within the privity and knowledge of the licensee, such licensee shall be liable for the full amount of all cleanup costs and damages.

[(f)(1) There is established a Deepwater Port Liability Fund (hereinafter referred to as the "Fund") as a nonprofit corporate entity which may sue or be sued in its own name. The Fund shall be administered by the Secretary.

[(2) The Fund shall be liable, without regard to fault, for all cleanup costs and all damages in excess of those actually compensated pursuant to subsections (d) and (e) of this section.

[(3) Each licensee shall collect from the owner of any oil loaded or unloaded at the deepwater port operated by such licensee, at the time of loading or unloading, a fee of 2 cents per barrel, except that (A) bunker or fuel oil for the use of any vessel, and (B) oil which was transported through the trans-Alaska pipeline, shall not be subject to such collection. Such collections shall be delivered to the Fund at such times and in such manner as shall be prescribed by the Secretary. These collections shall cease after the date of enactment of the Deepwater Port Act Amendments of 1984, unless there are adjudicated claims against the Fund to be satisfied. The Secretary may order the collection of the fee to be resumed when the unobligated balance of the Fund as reduced by the unliquidated debts to the United States Treasury is less than $4,000,000. Any collection of fees ordered by the Secretary under the preceding sentence shall cease whenever the unobligated balance of the Fund as reduced by the unliquidated debts to the United States Treasury exceeds $4,000,000. The Fund may borrow from the United States Treasury at an interest rate to be determined by the Secretary of the Treasury amounts sufficient to maintain the available balance in the Fund at $4,000,000, but only to such extent and in such amounts as are provided in advance in appropriation Acts. Such amounts shall remain available until expended. Whenever the money in the Fund is less than the amount the Secretary determines is needed to draw upon under subsection (c)(3) of this section or the claims for cleanup costs and damages for which it is liable under this section, the Fund shall borrow the balance required to pay such claims from the United States Treasury at an interest rate determined by the Secretary of the Treasury. Costs of administration shall be paid from the Fund only after appropriation in an appropriation bill. All sums not needed to draw upon under subsection (c)(3) of this section or for administration and the satisfaction of claims shall be prudently invested in income-producing securities issued by the United States and approved by the Secretary of the Treasury. Income from such securities shall be applied to the principal of the Fund.

[(g) Liability shall not be imposed under subsection (d) or (e) of this section if the owner or operator of a vessel or the licensee can show that the discharge was caused solely by (1) an act of war, or (2) negligence on the part of the Federal Government in establishing and maintaining aids to navigation, in addition, liability with respect to damages claimed by a damaged party shall not be imposed under subsection (d), (e), or (f) of this section if the owner or operator of a vessel, the licensee, or the Fund can show that such damage was caused solely by the negligence of such party.

[(h)(1) In any case where liability is imposed pursuant to subsection (d) of this section, if the discharge was the result of the negligence of the licensee, the owner or operator of a vessel held liable shall be subrogated to the rights of any person entitled to recovery against such licensee.

[(2) In any case where liability is imposed pursuant to subsection (e) of this section, if the discharge was the result of the unseaworthiness of a vessel or the negligence of the owner or operator of such vessel, the licensee shall be subrogated to the rights of any person entitled to recovery against such owner or operator. In that event, the owner and operator of the vessel are jointly and severally liable for cleanup costs and damages resulting from that discharge in the same manner and to the same extent as under subsection (d) of this section.

[(3) Payment of compensation for any damages pursuant to subsection (f)(2) of this section shall be subject to the Fund acquiring by subrogation all rights of the claimant to recover for such damages from any other person. When the Fund under this subsection is subrogated to the right of any person entitled to recovery against the owner or operator of a vessel, that owner and operator are jointly and severally liable for cleanup costs and damages resulting from that discharge in the same manner and to the same extent as under subsection (d) of this section.

[(4) The liabilities established in this section shall in no way affect or limit any rights which the licensee, the owner, or operator of a vessel, or the Fund may have against any third party whose act may in any way have caused or contributed to a discharge of oil.

[(5) In any case where the owner or operator of a vessel or the licensee of a deepwater port from which oil is discharged acts to remove such oil in accordance with subsection (c)(1) of this section, such owner or operator or such licensee shall be entitled to recover from the Fund the reasonable cleanup cost incurred in such removal if he can show that such discharge was caused solely by (A) an act of war or (B) negligence on the part of the Federal Government in establishing and maintaining aids to navigation.

[(i)(1) The Attorney General may act on behalf of any group of damaged citizens he determines would be more adequately represented as a class in recovery of claims under this section. Sums recovered shall be distributed to the members of such group. If, within 90 days after a discharge of oil in violation of this section has occurred, the Attorney General fails to act in accordance with this paragraph, to sue on behalf of a group of persons who may be entitled to compensation pursuant to this section for damages caused by such discharge, any member of such group may maintain a class action to recover such damages on behalf of such group. Failure of the Attorney General to act in accordance with this subsection shall have no bearing on any class action maintained in accordance with this paragraph.

[(2) In any case where the number of members in the class exceeds 1,000, publishing notice of the action in the Federal Register and in local newspapers serving the areas in which the damaged parties reside shall be deemed to fulfill the requirement for public notice established by rule 23(c)(2) of the Federal Rules of Civil Procedure.

[(3) The Secretary may act on behalf of the public as trustee of the natural resources of the marine environment to recover for damages to such resources in accordance with this section. Sums recovered shall be applied to the restoration and rehabilitation of such natural resources by the appropriate agencies of Federal or State government.

[(j)(1) The Secretary shall establish by regulation procedures for the filing and payment of claims for cleanup costs and damages pursuant to this Act.

[(2) No claims for payment of cleanup costs or damages which are filed with the Secretary more than 3 years after the date of the discharge giving rise to such claims shall be considered.

[(3) Appeals from any final determination of the Secretary pursuant to this section shall be filed not later than 30 days after such determination in the United States Court of Appeals of the circuit within which the nearest adjacent coastal State is located.]

[(k])*(c)* (1) This section shall not be interpreted to preempt the field of liability or to preclude any State from imposing additional requirements or liability for any discharge of oil from a deepwater port or a vessel within any safety zone.

(2) Any person who receives compensation for damages pursuant to this section shall be precluded from recovering compensation for the same damages pursuant to any other State or Federal law. Any person who receives compensation for damages pursuant to any other Federal or State law shall be precluded from receiving compensation for the same damages as provided in this section.

[(l) The Secretary shall require that any owner or operator of a vessel using any deepwater port, or any licensee of a deepwater port, shall carry insurance or give evidence of other financial responsibility in an amount sufficient to meet the liabilities imposed by this section.]

[(m)] *(d)* As used in this section the term—

[(1) "cleanup costs" means all actual costs, including but not limited to costs of the Federal Government, of any State or local government, of other nations or of their contractors or subcontractors incurred in the (A) removing or attempting to remove, or (B) taking other measures to reduce or mitigate damages from, any oil discharged into the marine environment in violation of subsection (a)(1) of this section;

[(2) "damages" means all damages (except cleanup costs) suffered by any person, or involving real or personal property, the natural resources of the marine environment, or the coastal environment of any nation, including damages claimed without regard to ownership of any affected lands, structures, fish, wildlife, or biotic or natural resources;]

[(3)] *(1)* "discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting emptying, or dumping into the marine environment of quantities of oil determined to be harmful pursuant to regulations issued by the Administrator of the Environmental Protection Agency; and

[(4)] *(2)* "owner or operator" means any person owning, operating, or chartering by demise, a vessel.

[(n)(1) The Attorney General, in cooperation with the Secretary, the Secretary of State, the Secretary of the Interior, the Administrator of the Environmental Protection Agency, the Council on Environmental Quality, and the Administrative Conference of the United States, is authorized and directed to study methods and procedures for implementing a uniform law providing liability for cleanup costs and damages from oil spills from Outer Continental Shelf operations, deepwater ports, vessels, and other ocean-related sources. The study shall give particular attention to methods of adjudicating and settling claims as rapidly, economically, and equitably as possible.

[(2) The Attorney General shall report the results of his study together with any legislative recommendations to the Congress within 6 months after the date of enactment of this Act.]

### RELATIONSHIP TO OTHER LAWS

SEC. 19. (a)(1) The Constitution, laws, and treaties of the United States shall apply to a deepwater port licensed under this Act and to activities connected, associated, or potentially interfering with the use or operation of any such port, in the same manner as if such port were an area of exclusive Federal jurisdiction located within a State. Nothing in this Act shall be construed to relieve, exempt, or immunize any person from any other requirement imposed by Federal law, regulation, or treaty[.]*; except that discharges from a deepwater port or from a vessel within a deepwater port safety zone which are subject to the civil penalty provisions of section 18(a)(2) of this Act shall not be subject to the penalty provisions of any other Federal law.* Deepwater ports licensed under this

Act do not possess the status of islands and have no territorial seas of their own.

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## The Outer Continental Shelf Lands Act Amendments of 1978

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### [TITLE III—OFFSHORE OIL SPILL POLLUTION FUND

[Sec. 301. Definitions.
[Sec. 302. Fund establishment, adminstration, and financing.
[Sec. 303. Damages and claimants.
[Sec. 304. Liability.
[Sec. 305. Financial responsibility.
[Sec. 306. Notification, designation, and advertisement.
[Sec. 307. Claims settlement.
[Sec. 308. Subrogation.
[Sec. 309. Jurisdiction and venue.
[Sec. 310. Relationship to other law.
[Sec. 311. Prohibition.
[Sec. 312. Penalties.
[Sec. 313. Authorization of appropriation.
[Sec. 314. Annual report.
[Sec. 315. Effective dates.]

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## [TITLE III—OFFSHORE OIL SPILL POLLUTION FUND

### [DEFINITIONS

[SEC. 301. For the purposes of this title, the term—

[(1) "Secretary" means the Secretary of Transportation;

[(2) "Fund" means the Offshore Oil Pollution Compensation Fund established under section 302 of this title

[(3) "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, or governmental entity

[(4) "incident" means any occurrence or series of related occurrences, involving one or more offshore facilities or vessels, or any combination thereof, which causes or poses an imminent threat of oil pollution

[(5) "vessel" means every description of watercraft or other contrivance, whether or not self-propelled, which is operating in the waters above the Outer Continental Shelf (as the term "outer Continental Shelf" is defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a))), or which is operating in the waters above submerged lands seaward from the coastline of a State (as the term "submerged lands" is described in section 2(a) of the Submerged Lands Act (43 U.S.C. 1301 (a)(2))), and which is transporting oil directly from an offshore facility

[(6) "public vessel" means a vessel which—

[(A) is owned or chartered by demise, and operated by (i) the United States, (ii) a State or political subdivision thereof, or (iii) a foreign government; and

[(B) is not engaged in commercial service;

[(7) "facility" means a structure, or a group of structures (other than a vessel or vessels), used for the purpose of transporting, drilling for, producing, processing, storing, transferring, or otherwise handling oil;

[(8) "offshore facility" includes any oil refinery, drilling structure, oil storage or transfer terminal, or pipeline, or any appurtenance related to any of the foregoing, which is used to drill for, produce, store, handle, transfer, process, or transport oil produced from the Outer Continental Shelf (as the term "outer Continental Shelf" is defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)))), and is located on the Outer Continental Shelf, except that such term does not include (A) a vessel, or (B) a deepwater port (as the term "deepwater port" is defined in section 3(10) of the Deepwater Port Act of 1974 (33 U.S.C. 1502));

[(9) "oil pollution" means—

[(A) the presence of oil either in an unlawful quantity or which has been discharged at an unlawful rate (i) in or on the waters above submerged lands seaward from the coastline of a State (as the term "submerged lands" is described in section 2(a)(2) of the Submerged Lands Act (43 U.S.C. 1301(a)(2))), or on the adjacent shoreline of such a State, or (ii) on the waters of the contiguous zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606); or;

[(B) the presence of oil in or on the waters of the high seas outside the territorial limits of the United States—

[(i) when discharged in connection with activities conducted under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.); or

[(ii) causing injury to or loss of natural resources belonging to, appertaining to, or under the exclusive management authority of the United States; or

[(C) the presence of oil in or on the territorial sea, navigable or internal waters, or adjacent shoreline of a foreign country, in a case where damages are recoverable by a foreign claimant under this title;

[(10) "United States claimant" means any person residing in the United States, the Government of the United States or an agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim under this title;

[(11) "foreign claimant" means any person residing in a foreign country, the government of a foreign country, or any agency or political subdivision thereof, who asserts a claim under this title;

[(12) "United States" includes and "State" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession over which the United States has jurisdiction;

[(13) "oil" means petroleum, including crude oil or any fraction or residue therefrom;

[(14) "cleanup costs" means costs of reasonable measures taken, after an incident has occurred, to prevent, minimize, or mitigate oil pollution from such incident;

[(15) "damages" means compensation sought pursuant to this title by any person suffering any direct and actual injury proximately caused by the discharge of oil from an offshore facility or vessel, except that such term does not include cleanup costs;

[(16) "person in charge" means the individual immediately responsible for the operation of a vessel or offshore facility;

[(17) "claim" means a demand in writing for a sum certain;

[(18) "discharge" means any emission, intentional or unintentional, and includes spilling, leaking, pumping, pouring, emptying, or dumping;

[(19) "owner" means any person holding title to, or in the absence of title, any other indicia of ownership of, a vessel or offshore facility, whether by lease, permit, contract, license, or other form of agreement, or with respect to any offshore facility abandoned without prior approval of the Secretary of the Interior, the person who owned such offshore facility immediately prior to such abandonment, except that such term does not include a person who, without participating in the management or operation of a vessel or offshore facility, holds indicia of ownership primarily to protect his security interest in the vessel or offshore facility;

[(20) "operator" means—

[(A) in the case of a vessel, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualing, and supplying of the vessel; or

[(B) in the case of an offshore facility, any person, except the owner, who is responsible for the operation of such facility by agreement with the owner;

[(21) "property" means littoral, riparian, or marine property;

[(22) "removal costs" means—

[(A) costs incurred under subsection (c), (d), or (l) of section 311 of the Federal Water Pollution Control Act, and section 5 of the Intervention on the High Seas Act; and

[(B) cleanup costs, other than the costs described in subparagraph (A);

[(23) "guarantor" means the person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator;

[(24) "gross ton" means a unit of 100 cubic feet for the purpose of measuring the total unit capacity of a vessel; and

[(25) "barrel" means 42 United States gallons at 60 degrees Fahrenheit.

### FUND ESTABLISHMENT, ADMINISTRATION, AND FINANCING

[SEC. 302. (a) There is hereby established in the Treasury of the United States an Offshore Oil Pollution Compensation Fund in an amount not to exceed $200,000,000, except that such limitation shall be increased to the extend necessary to permit any moneys recovered or collected which are referred to in subsection (b)(2) of this section to be paid into the Fund. The Fund shall be administered by the Secretary and the Secretary of the Treasury as specified in this title. The Fund may sue and be sued in its own name.

[(b) The Fund shall be composed of—

[(1) all fees collected pursuant to subsection (d) of this section; and

[(2) all other moneys recovered or collected on behalf of the Fund under section 308 or any other provision of this title.

[(c) The Fund shall be immediately available for—

[(1) removal costs described in section 301(22);

[(2) the processing and settlement of claims under section 307 of this title (including the costs of assessing injury to, or destruction of, natural resources); and

[(3) subject to such amounts as are provided in appropriation Acts all administrative and persnnel costs of the Federal Government incident to the administration of this title, including, but not limited to, the claims settlement activities and adjudicatory and judicial proceedings, whether or not such costs are recoverable under section 308 of this title.

The Secretary is authorized to promulgate regulations designating the person or persons who may obligate available money in the Fund for such purposes.

[(d)(1) The Secretary shall levy and the Secretary of the Treasury shall collect a fee of not to exceed 3 cents per barrel on oil obtained from the Outer Continental Shelf, which shall be imposed on the owner of the oil when such oil is produced.

[(2) The Secretary of the Treasury, after consulting with the Secretary, may promulgate reasonable regulations relating to the collection of the fees authorized by paragraph (1) of this subsection and, from time to time, the modification thereof. Any modification shall become effective on the date specified in the regulations making such modification, but no earlier than the ninetieth day following the date such regulation is published in the Federal Register. Any modification of the fee shall be designed to insure that the Fund is maintained at a level of not less than $100,000,000 and not more than $200,000,000. No regulation that sets or modifies fees, whether or not in effect, may be stayed by any court pending completion of judicial review of such regulation.

[(3)(A) Any person who fails to collect or pay any fee as required by any regulation promulgated under paragraph (2) of this subsection shall be liable for civil penalty not to exceed $10,000, to be assessed by the Secretary of the Treasury, in addition to the fee required to be collected or paid and the interest on such fee at the rate such fee would have earned if collected or paid when due and invested in special obligations of the United States in accordance with subsection (e)(2) of this section. Upon the failure of any person so liable to pay any penalty, fee, or interest upon demand, the Attorney General may, at the request of the Secretary of the Treasury, bring an action in the name of the Fund against that person for such amount.

[(B) Any person who falsifies records or documents required to be maintained under any regualtion promulgated under this subsection shall be subject to prosecution for a violation of section 1001 of title 18, United States Code.

[(4) The Secretary of the Treasury may, by regulation, designate the reasonably necessary records and documents to be kept by persons for who fees are to be collected pursuant to paragraph (1) of this subsection, and the Secretary of the Treasury and the Comptroller General of the United States shall have access to such records and documents for the purpose of audit and examination.

[(e)(1) The Secretary shall determine the level of funding required for immediate access in order to meet potential obligations of the Fund.

[(2) The Secretary of the Treasury may invest any excess in the Fund, above the level determined under paragraph (1) of this subsection, in interest-bearing special obligations of the United States. Such special obligations may be redeemed at any time in accordance with the terms of the special issue and pursuant to regulations promulgated by the Secretary of the Treasury. The interest on, and the proceeds from the sale of, any obligations held in the Fund shall be deposited in and credited to the Fund.

[(f) If at any time the moneys available in the Fund are insufficient to meet the obligations of the Fund, the Secretary shall issue to the Secretary of the Treasury notes or other obligations in the forms and denominations, bearing the interest rates and maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Redemption of such notes or other obligations shall be made by the Secretary from moneys in the Fund. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding marketable obligations of comparable maturity. The Secretary of the Treasury shall purchase any notes or other obligations issued under this subsection and, for that purpose, he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act. The purpose for which securities may be issued under that Act are extended to include any purchase of such notes or other obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales of the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

### [DAMAGES AND CLAIMANTS

[SEC. 303. (a) Claims for economic loss, arising out of or directly resulting from oil pollution, may be asserted for—

[(1) removal costs; and

[(2) damages, including—

[(A) injury to, or destruction of, real or personal property;

[(B) loss of use of real or personal property;

[(C) injury to, or destruction of, natural resources;

[(D) loss of use of natural resources;

[(E) loss of profits or impairment of earning capacity due to injury to, or destruction of, real or personal property or natural resources; and

[(F) loss of tax revenue for a period of one year due to injury to real or personal property.

[(b) A claim authorized by subsection (a) of this section may be asserted—

[(1) under paragraph (1), by any claimant, except that the owner or operator of a vessel or offshore facility involved in an incident may assert such a claim only if he can show—

[(A) that he is entitled to a defense to liability under section 304(c)(1) or 304(c)(2) of this title; or

[(B) if not entitled to such a defense to liability, that he is entitled to a limitation of liability under section 304(b), except that if he is not entitled to such a defense to liability but is entitled to such a limitation of liability, such claim may be asserted only as to the removal costs incurred in excess of that limitation;

[(2) under paragraphs (2) (A), (B), and (D), by any United States claimant if the property involved is owned or leased, or the natural resource involved is utilized, by the claimant;

[(3) under paragraph (2)(C), by the President, as trustees for natural resources over which the Federal Government has sovereign rights or exercises exclusive management authority, or by any State for natural resources within the boundary of the State belonging to, managed by, controlled by, or appertaining to the State, and sums recovered under paragraph (2)(C) shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government or the State, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources;

[(4) under paragraph (2)(E), by any United States claimant if the claimant derives at least 25 per centurm of his earnings from activities which utilize the property or natural resource;

[(5) under paragraph (2)(F), by the Federal Government and any State or political subdivision thereof;

[(6) under paragraphs (2)(A) through (E), by a foreign claimant to the same extent that a United States claimant may assert a claim if—

[(A) the oil pollution occurred in or on the territorial sea, navigable waters or internal waters, or adjacent shoreline of a foreign country of which the claimant is a resident;

[(B) the claimant is not otherwise compensated for his loss;

[(C) the oil was discharged from an offshore facility or from a vessel in connection with activities conducted under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.); and

[(D) recovery is authorized by a treaty or an executive agreement between the United States and the foreign country involved, or the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants;

[(7) under paragraph (1) or (2), by the Attorney General, on his own motion or at the request of the Secretary, on behalf of any group of United States claimants who may assert a claim under this subsection, when he determines that the claimants would be more adequately represented as a class in asserting their claims.

[(c) If the Attorney General fails to take action under paragraph (7) of subsection (b) within sixty days of the date on which the Secretary designates a source under section 306 of this title, any member of a group described in such paragraph may maintain a class action to recover damages on behalf of that group. Failure of the Attorney General to take action shall have no bearing on any class action maintained by any claimant for damages authorized by this section.

### [LIABILITY

[SEC. 304. (a) Subject to the provisions of subsections (b) and (c) of this section, the owner and operator of a vessel other than a public vessel, or of an offshore facility, which is the source of oil pollution, or poses a threat of oil pollution in circumstances which justify the incurrence of the type of costs described in section 301(22) of this title, shall be jointly, severally, and strictly liable for all loss for which a claim may be asserted under section 303 of this title.

[(b) Except when the incident is caused primarily by willful misconduct or gross negligence, within the privity or knowledge of the owner or operator, or is caused primarily by a violation, within the privity or knowledge of the owner or operator, of applicable safety, construction, or operating standards or regulations of the Federal Government, the total of the liability under subsection (a) of this section incurred by, or behalf of, the owner or operator shall be—

[(1) in the case of a vessel, limited to $250,000 or $300 per gross ton, whichever is greater, except when the owner or operator of a vessel fails or refuses to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup activities; or

[(2) in the case of an offshore facility, the total of removal and cleanup costs, and an amount limited to $35,000,000 for all damages.

[(c) There shall be no liability under subsection (a) of this section—

[(1) if the incident is caused solely by any act of war, hostilities, civil war, or insurrection, or by an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistable character, the effect of which could not have been prevented or avoided by the exercise of due care or foresight; or

[(2) if the incident is caused solely by the negligent or intentional act of the damaged party or any third party (including any government entity).

[(d) Notwithstanding the limitations, exceptions, or defenses of subsection (b) or (c) of this section, all costs of removal incurred by the Federal Government or any State or local official or agency in connection with a discharge of oil from any offshore facility or vessel shall be borne by the owner and operator of the offshore facility or vessel from which the discharge occurred.

[(e) The Secretary shall, from time to time, report to Congress on the desirability of adjusting the monetary limitation of liability specified in subsection (b) of this section.

[(f)(1) Subject to the provisions of paragraph (2) of this subsection, the Fund shall be liable, without any limitation, for all losses for which a claim may be asserted under section 303 of this title, to the extent that such losses are not otherwise compensated.

[(2) Except for the removal costs specified in section 301(22), there shall be no liability under paragraph (1) of this subsection—

[(A) as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

[(B) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

[(g)(1) In addition to the losses for which claims may be asserted under section 303 of this title, and without regard to the limitation of liability provided in subsection (b) of this section, the owner, operator, or guarantor of an offshore facility or vessel shall be liable to the claimant for interest on the amount paid in satisfaction of the claim for the period from the date upon which the claim is presented to such person to the date upon which the claimant is paid, inclusive, less the period, if any, from the date upon which such owner, operator, or guarantor offers the claimant an amount equal to or greater than the amount finally paid in satisfaction of the claim to the date upon which the claimant accepts such amount, inclusive. However, if such owner, operator, or guarantor offers the claimant, within sixty days of the date upon which the claim is presented, or of the date upon which advertising is commenced pursuant to section 306 of this title, whichever is later, an amount equal to or greater than the amount finally paid in satisfaction of the claim, the owner, operator, or guarantor shall be liable for the interest provided in this paragraph only from the date the offer is accepted by the claimant to the date upon which payment is made to the claimant, inclusive.

[(2) The interest provided in paragraph (1) of this subsection shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve Bulletin.

[(h) Nothing in this title shall bar a cause of action that an owner or operator, subject to liability under subsection (a) of this section, or a guarantor, has or would have, by reason of subrogation or otherwise, against any person.

[(i) To the extent that they are in conflict or otherwise inconsistent with any other provision of law relating to liability or the limitation thereof, the provisions of this section shall supersede such other provision of law, including section 4283(a) of the Revised Statutes (46 U.S.C. 183(a)).

### [FINANCIAL RESPONSIBILITY

[SEC. 305. (a)(1) The owner or operator of any vessel (except a non-self-propelled barge that does not carry oil as fuel or cargo which uses an offshore facility shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the owner or operator of such vessel would be exposed in a case where he would be entitled to limit his liability in accordance with the provisions of section 304(b) of this title. Financial responsibility may be established by any one, or any combination, of the following methods, acceptable to the President: evidence of insurance guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In any case where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

[(2) The Secretary, in accordance with regulations promulgated by him, shall—

[(A) deny entry to any port or place in the United States or to the navigable waters to; and

[(B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States,

any vessel subject to this subsection which, upon request, does not produce certification furnished by the President that such vessel is in compliance with the financial responsibility provisions of paragraph (1) of this subsection.

[(3) The Secretary, in accordance with regulations promulgated by him, shall have access to all offshore facilities and vessels conducting activities under the Outer Continental Shelf Lands Act, and such facilities and vessels shall, upon request, show certification of financial responsibility.

[(b) The owner or operator of an offshore facility which (1) is used for drilling for, producing, or processing oil, or (2) has the capacity to transport, store, transfer, or otherwise handle more than one thousand barrels of oil at any one time, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the owner or operator of such facility would be exposed in a case where he would be entitled to limit his liability in accordance with the provisions of section 304(b) of this title, or $35,000,000, whichever is less.

[(c) (1) Any claim authorized by section 303(a) may be asserted directly against any guarantor providing evidence of financial responsibility for any owner or operator of an offshore facility or vessel as required under this section. In defending such claim, the guarantor shall be entitled to invoke all rights and defenses which would be available to such owner or operator under this title. Such guarantor shall also be entitled to invoke the defense that the incident was caused by the willful misconduct of such owner or operator, but shall not be entitled to invoke any other defense which such guarantor might be entitled to invoke in proceedings brought by such owner or operator against such guarantor.

[(2) The total liability of any guarantor in a direct action suit brought under this section shall be limited to the aggregate amount of the monetary limits of the policy of insurance, guarantee, surety bond, letter of credit, or similar instrument obtained from the guarantor by the person subject to liability. Nothing in this subsection shall be construed, interpreted or applied to diminish the liability of any person under this Act or other applicable law.

[(d) The President shall conduct a study to determine—

[(1) whether adequate private oil pollution insurance protection is available on reasonable terms and conditions to the owners and operators of vessels, onshore facilities, and offshore facilities; and

[(2) whether the market for such insurance is sufficiently competitive to assure purchasers of features such as a reasonable range of deductibles, coinsurance provisions, and exclusions.

The President shall submit the results of his study, together with his recommendations, within one year after the date of enactment of this title, and shall submit an interim report on his study within three months after such date of enactment.

[(e) Any owner or operator of an offshore facility may enter into an indemnity, hold harmless, or similar agreement with any person holding a lease on the Outer Continental Shelf with respect to any liability arising under this title. Notwithstanding the provision of this subsection, any such indemnity, hold harmless, or similar agreement shall not relieve such owner, operator, or person from liability arising under this title. Nothing in this subsection shall be construed to alter or in any way affect the financial responsibility requirement imposed under this section.

### [NOTIFICATION, DESIGNATION, AND ADVERTISEMENT

[SEC. 306. (a) The person in charge of a vessel or offshore facility which is involved in an incident shall immediately notify the Secretary of the incident as soon as he has knowledge thereof. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against such person or his employer in any criminal case, other than a case involving prosecution for perjury or for giving a false statement.

[(b)(1) When the Secretary receives information pursuant to subsection (a) of this section or otherwise of an incident which involves oil pollution, the Secretary shall, where possible, designate the source or sources of the oil pollution and shall immediately notify the owner and operator of such source and the guarantor of such designation.

[(2) When a source designated under paragraph (1) of this subsection is a vessel or offshore facility and the owner, operator, or guarantor fails to inform the Secretary, within five days after receiving notification of the designation, of his denial of such designation, such owner, operator, or guarantor, as required by regulations promulgated by the Secretary, shall advertise the designation and the procedures by which claims may be presented to him. If advertisement is not made in accordance with this paragraph, the Secretary shall, as he finds necessary, and at the expense of the owner, operator, or guarantor involved, advertise the designation and the procedures by which claims may be presented to such owner, operator, or guarantor.

[(c) In a case where—

[(1) the owner, operator, and guarantor all deny a designation in accordance with paragraph (2) of subsection (b) of this section;

[(2) the source of the discharge was a public vessel; or

[(3) the Secretary is unable to designate the source of sources or the discharge under paragraph (1) of such subsection (b),

the Secretary shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented of the Fund.

[(d) Advertisement under subsection (b) of this section shall commence no later than fifteen days after the date of the designation made under such subsection and shall continue for a period of no less than thirty days.

### [CLAIMS SETTLEMENT

[SEC. 307. (a) Except as provided in subsection (b) of this section, all claims shall be presented to the owner, operator, or guarantor.

[(b) All claims shall be presented to the Fund—

[(1) where the Secretary has advertised or otherwise notified claimants in accordance with section 306(c) of this title; or

[(2) where the owner or operator may recover under the provisions of section 303(b) (1) of this title.

[(c) In the case of a claim presented in accordance with subsection (a) of this section, and in which—

[(1) the person to whom the claim is presented denies all liability for the claim, for any reason; or

[(2) the claim is not settled by any person by payment to the claimant within sixty days from the date upon which (A) the claim is presented, or (B) advertising is commenced pursuant to section 306(b), whichever is later,

the claimant may elect to commence an action in court against the owner, operator, or guarantor, or to present the claim to the Fund, that election to be irrevocable and exclusive.

[(d) In the case of a claim presented in accordance with subsection (a) of this section, where full and adequate compensation is unavailable, either because the claim exceeds a limits of liability invoked under section 304(b) of this title or because the owner, operator, and guarantor to whom the claim is presented are financially incapable of meeting their obligations in full, a claim for the uncompensated damages may be presented to the Fund.

[(e) In the case of a claim which is presented to any person, pursuant to subsection (a) of this section, and which is being presented to the Fund, pursuant to subsection (c) or (d) of this section, such person, at the request of the claimant, shall transmit the claim and supporting documents to the Fund. The Secretary may, by regulation, prescribe the documents to be transmitted and the terms under which they are to be transmitted.

[(f) In the case of a claim presented to the Fund, pursuant to subsection (b), (c), or (d) of this section, and in which the Fund—

[(1) denies all liability for the claim, for any reason; or

[(2) does not settle the claim by payment to the claimant within sixty days after the date upon which (A) the claim is presented to the Fund, or (B) advertising is commenced pursuant to section 306(c) of this title, whichever is later,

the claimant may submit the dispute to the Secretary for decision in accordance with section 554 of title 5, United States Code. However, a claimant who has presented a claim to the Fund pursuant to such subsection (b) may elect to commence an action in court against the Fund in lieu of submission of the dispute to the Secretary for decision, that election to be irrevocable and exclusive.

[(g)(1) The Secretary shall promulgate regulations which establish uniform procedures and standards for the appraisal and settlement of claims against the Fund.

[(2) Except as provided in paragraph (3) of this subsection, the Secretary shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the Fund and may contract to pay compensation for those facilities and services. Any contract made under the provisions of this paragraph may be made without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5) upon a showing by the Secretary that advertising is not reasonably practicable. The Secretary may make advance payments to a contractor for services and facilities, and the Secretary may advance to the contractor funds to be used for the payment of claims. The Secretary may review and audit claim payments made pursuant to this subsection. A payment to a claimant for a single claim in excess of $100,000, or two or more claims aggregating in excess of $200,000, shall be first approved by the Secretary. When the services of a State agency are used in processing and settling claims, no payment may be made on a claim asserted by or on behalf of such State or any of its agencies or subdivisions unless the payment has been approved by the Secretary.

[(3) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the Secretary may use Federal personnel to process claims against the Fund.

[(h) Notwithstanding subsection (b) of section 556 of title 5, United States Code, the Secretary is authorized to appoint, from time to time for a period of not to exceed one hundred and eighty days, one or more panels, each comprised to three individuals, to hear and decide disputes submitted to the Secretary pursuant to subsection (f) of this section. At least one member of each panel shall be qualified to conduct adjudicatory proceedings and shall preside over the activities of the panel. Each member of a panel shall possess competence in the evaluation and assessment of property damage and the economic losses resulting therefrom. Panel members may be appointed from private life or from any Federal agency except the staff administering the Fund. Each panel member appointed from private life shall receive a per diem compensation, and each panel member shall receive necessary traveling and other expenses while engaged in the work of a panel. The provisions of chapter 11 of title 18, United States Code, and of Executive Order 11222, as amended, regarding special Government employees, shall apply to panel members appointed from private life.

[(i)(1) Upon receipt of a request refer a decision from a claimant, properly made, the Secretary shall refer the dispute to (A) an administrative law judge appointed under section 3105 of title 5, United States Code, or (B) a panel appointed under subsection (h) of this section.

[(2) The administrative law judge and each member of a panel to which a dispute is referred for decision shall be a resident of the United States judicial circuit within which the damage complained of occurred, or, if the damage complained of occurred within two or more circuits, of any of the affected circuits, or, if the damage occurred outside any circuit, of the nearest circuit.

[(3) Upon receipt of a dispute, the administrative law judge or panel shall adjudicate the case and render a decision in accordance with section 554 of title 5, United States Code. In any proceeding subject to this subsection, the presiding officer may require by subpena any person to appear and testify and produce books, papers, documents, of tangible things at a hearing or deposition at any designated place. Subpenas shall be issued and enforced in accordance with procedures in subsection (d) of section 555 of title 5, United States Code, and rules promulgated by the Secretary. If a person fails or refuses to obey a subpena, the Secretary may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

[(4) A hearing conducted under this subsection shall be conducted within the United States judicial district within, or nearest to which, the damage complained of occurred, or, if the damage complained of occurred within two or more districts, in any of the affected districts, or if the damage occurred outside any district, in the nearest district.

[(5) The decision of the administrative law judge or panel under this subsection shall be the final order of the Secretary, except that the Secretary, in his discretion and in accordance with regulations which he may promulgate, may review the decision upon his own initiative or upon exception of the claimant or the Fund.

[(6) Final orders of the Secretary made under this subsection shall be reviewable pursuant to section 702 of title 5, United States Code, in the district courts of the United States.

[(j)(1) In any action brought pursuant to this title against an owner, operator, or guarantor, both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the Fund at the same time such pleadings are served upon the opposing parties.

[(2) The Fund may intervene in any action described in paragraph (1) of this subsection as a matter of right.

[(3) In any action described in paragraph (1) of this subsection to which the Fund is a party, if the owner, operator, or guarantor admits liability under this title, the Fund upon its motion shall be dismissed therefrom to the extent of the admitted liability.

[(4) If the Fund receives from either the plaintiff or the defendant notice of an action described in paragraph (1) of this subsection, the Fund shall be bound by any judgment entered therein, whether or not the Fund was a party to the action.

[(5) If neither the plaintiff nor the defendant gives notice of an action described in paragraph (1) of this subsection to the Fund, the limitation of liability otherwise permitted by section 304(b) of this title shall not be available to the defendant, and the plantiff shall not recover from the Fund any sums not paid by the defendant.

[(k) In any brought against the Fund under this title, the plaintiff may join any owner, operator, or guarantor, and the Fund may join any person who is or may be liable to the Fund under any provision of this title.

[(l) No claim may be presented, nor may an action be commenced for economic losses recoverable under this title, unless such claim is presented to, or such action is commenced against, the owner, operator, or guarantor, or the Fund, as to their respective liabilities, within three years after after the date of discovery of the economic loss for which a claim may be asserted under section 303(a) of this title, or within six years of the date of the incident which resulted in such loss, whichever is earlier.

### [SUBROGATION

[SEC. 308. (a) Any person or governmental entity, including the Fund, who pays compensation to any claimant for an economic loss, compensable under section 303 of this title, shall be subrogated to all rights, claims, and causes of action which such claimant has under this title.

[(b) Upon request of the Secretary, the Attorney General may commence an action, on behalf of the Fund, for the compensation paid by the Fund to any claimant pursuant to this title. Such an action may be commenced against an owner, operator, or guarantor, or against any other person or governmental entity, who is liable, pursuant to any law, to the compensated claimant or to the Fund, for economic losses for which the compensation was paid.

[(c) In any claim or action by the Fund against any owner, operator, or guarantor, pursuant to the provisions of subsection (a) or (b), the Fund shall recover—

[(1) for a claim presented to the Fund (where there has been a denial of source designation) pursuant to section 307(b)(1) of this title, or (where there has been a denial of liability) pursuant to section 307(c)(1) of this title—

[(A) subject only to the limitation of liability to which the defendant is entitled under section 304(b) of this title, the amount of the Fund has paid to the claimant, without reduction;

[(B) interest on such amount, at the rate calculated in accordance with section 304(g)(2) of this title, from the date upon which the claim is presented by the claimant to the defendant to the date upon which the Fund is paid by the defendant, inclusive, less the period, if any, from the date upon which the Fund offers to the claimant the amount finally paid by the Fund to the claimant in satisfaction of the claim against the Fund to the date upon which the claimant accepts that offer, inclusive; and

[(C) all costs incurred by the Fund by reason of the claim, both of the claimant against the Fund and the Fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; and

[(2) for a claim presented to the Fund pursuant to section 397(c)(2) of this title—

[(A) in which the amount the Fund has paid to the claimant exceeds the largest amount, if any, the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

[(i) subject to dispute by the defendant as to any excess over the amount offered to the claimant by the defendant, the amount the Fund has paid to the claimant;

[(ii) interest, at the rate calculated in accordance with section 304(g)(2) of this title, for the period specified in paragraph (1)(B) of this subsection; and

(iii) all costs incurred by the Fund by reason of the claim of the Fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; or

[(B) in which the amount the Fund has paid to the claimant and is less than or equal to the largest amount the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

[(i) the amount which the Fund has paid to the claimant, without reduction;

[(ii) interest, at the rate calculated in accordance with section 304(g)(2) of this title, from the date upon which the claim is presented by the claimant to the defendant to the date upon which the defendant offered to the claimant the largest amount referred to in this subparagraph, except that if the defendant tenders the offer of the largest amount referred to in this subparagraph within sixty days after the date upon which the claim of the claimant is either presented to the defendant or advertising is commenced pursuant to section 306 of this title, the defendant shall not be liable for interest for that period; and [(iii) interest from the date upon which the claim of the Fund against the defendant is presented to the defendant to the date upon which the Fund is paid, inclusive, less the period, if any, from the date upon which the defendant offers to the Fund the amount finally paid to the Fund in satisfaction of the claim of the Fund to the date upon which the Fund accepts that offer, inclusive.

[(d) The Fund shall pay over to the claimant that portion of any interest the Fund recovers, pursuant to subsection (c)(1) and (2)(A), for the period from the date upon which the claim of the claimant is presented to the defendant to the date upon which the claimant is paid by the Fund, inclusive, less the period from the date upon which the Fund offers to the claimant the amount finally paid to the claimant in satisfaction of the claim to the date upon which the claimant accepts such offer, inclusive.

[(e) The Fund is entitled to recover for all interest and costs specified in subsection (c) of this section without regard to any limitation of liability to which the defendant may otherwise be entitled under this title.

### [JURISDICTION AND VENUE

[SEC. 309. (a) The United States district courts shall have original and exclusive jurisdiction of all controversies arising under this title, without regard to the citizenship of the parties or the amount in controversy.

[(b) Venue shall lie in any district wherein the injury complained of occurred, or wherein the defendant resides, may be found, or has his principal office. For the purposes of this section, the Fund shall reside in the District of Columbia.

### [RELATIONSHIP TO OTHER LAW

[SEC. 310. (a) Any person who receives compensation for damages or removal costs pursuant to this title shall be precluded from recovering compensation for the same damages or removal costs pursuant to any other State or Federal law. Any person who receives compensation for damages or removal costs pursuant to any other State or Federal law shall be precluded from receiving compensation for the same damages or removal costs under this title.

[(b) No owner or operator of an offshore facility or vessel who establishes and maintains evidence of financial responsibility in accordance with this section shall be required under any State law, rule, or regulation to establish any other evidence of financial responsibility in connection with liability for the discharge of oil from such offshore facility or vessel. Evidence of compliance with the financial responsibility requirement of this section shall be accepted by a State in lieu of any other requirement of financial responsibility imposed by such State in connection with liability for the discharge of oil from such offshore facility or vessel.

[(c) Except as otherwise provided in this title, this title shall not be interpreted to preempt the field of liability or to preclude any State from imposing additional requirements or liability for any discharge of oil resulting in damages or removal costs within the jurisdiction of such State.

### [PROHIBITION

[SEC. 311. The discharge of oil from any offshore facility or vessel, in quantities which the President under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321(b)) determines to be harmful, is prohibited.

### [PENALTIES

[SEC. 312. (a)(1) Any person who fails to comply with the requirements of section 305 of this title, the regulations promulgated thereunder, or any denial or detention order, shall be subject to a civil penalty of not to exceed $10,000.

[(2) The civil penalty described in paragraph (1) of this subsection may be assessed and compromised by the President or his designee, in connection with section 305(a)(1) of this title, and by the Secretary, in connection with section 305(a)(3) and section 305(b) of this title. No penalty shall be assessed until notice and an opportunity for hearing on the alleged violation have been given. In determining the amount of the penalty or the amount agreed upon in compromise, the demonstrated good faith of the party shall be taken into consideration.

[(3) At the request of the official assessing a penalty under this subsection, the Attorney General may bring an action in the name of the Fund to collect the penalty assessed.

[(b) Any person in charge who is subject to the jurisdiction of the United States and who fails to give the notification by section 306(a) of this title shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than one year, or both.

### [AUTHORIZATION OF APPROPRIATIONS

[SEC. 313. (a) There is authorized to be appropriated for the administration of this title $10,000,000 for the fiscal year ending September 30, 1979, $5,000,000 for the fiscal year ending September 30, 1980, and $5,000,000 for the fiscal year ending September 30, 1981.

[(b) There are also authorized to be appropriated to the Fund, from time to time, such amounts as may be necessary to carry out the purposes of the applicable provisions of this title, including the entering into contracts, any disbursements of funds, and the issurance of notes or other obligations pursuant to section 302(f) of this title.

[(c) Notwithstanding any other provision of this title, the authority to make contracts, to make disbursements, to issue notes or other obligations pursuant to section 302(f) of this title, to charge and collect fees pursuant to section 302(d) of this title, or to exercise any other spending authority shall be effective only to the extent provided, without fiscal year limitation, in appropriation Acts enacted after the date of enactment of this title.

### [ANNUAL REPORT

[SEC. 314. Within six months after the end of each fiscal year, the Secretary shall submit to the Congress (1) a report on the administration of the Fund during such fiscal year, and (2) his recommendations for such legislative changes as he finds necessary or appropriate to improve the management of the Fund and the administration of the liability provisions of this title.

### EFFECTIVE DATE

[SEC. 315. (a) This section, subsection (e) of section 304, subsection (d) of section 305, and all provisions of this title authorizing the delegation of authority or the promulgation of regulations shall be effective on the date of enactment of this title.

[(b) All other provisions of this title, and rules and regulations promulgated pursuant to such provisions, shall be effective on the one hundred and eightieth day after the date of enactment of this title.]

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